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SUPERIOR COURTS.

WITH AN ALPHABETICAL DIGEST OF THE SUBJECT-MATTER OF THE CASES CONTAINED IN THIS VOLUME, AND OTHER CONTEMPORARY CASES.

HILARY TERM 1889 TO HILARY TERM 1890.

PUBLISHED WEEKLY DURING THE SITTINGS OF THE COURTS.

[*For the Names of the Barristers contributing the Cases see page* 1.]

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THE LAW JOURNAL;

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NOTES OF CASES.

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SUPREME COURT OF JUDICATURE.

Court of Appeal.

W. D. I. FOULKES, ARTHUR CLEMENT EDDIS, WILLIAM EDWARD GORDON, EDWARD NASH, GEORGE HUMPHREYS, and HARRY BAIRD HEMMING, Barristers-at-Law.

HIGH COURT OF JUSTICE.

Chancery Division.

ARTHUR CORDERY, JAMES E. HORNE, GEORGE ABBOTT STRETTEN, WILLIAM COWELL DAVIES, LEWIS BOYD SEBASTIAN, JAMES EYRE THOMPSON, REGINALD BRODERICK SCHOMBERG, JOHN FRANCIS WAGGETT, and HARRY BAIRD HEMMING, Barristers-at-Law.

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Mortgage—Power of Sale—Sale by Mortgagee to Company in which he is a Shareholder—Validity of Sale.

The action was by mortgagors to set aside a sale by the mortgagees under the power of sale in the mortgage deed to the defendant company, in which one of the mortgagees at the time of the sale was a large shareholder. The sale was impeached by the plaintiffs on the ground (1) that the sale was in fact a fraudulent sale at an undervalue; and (2) that as a matter of law a sale by a mortgagee to a company in which the mortgagee was personally interested as a shareholder could not stand.

CHITTY, J., decided both points in favour of the defendants, and dismissed the action.

The mortgagors appealed, but on the appeal only raised the point of law, and did not appeal from the finding of Chitty, J., on the questions of fact.

Romer, Q.C., Gainsford Bruce, Q.C., and *Ingle Joyce* for the appellants.

Rigby, Q.C., and *Farwell* for the respondents.

Their LORDSHIPS held that there was no authority for saying that a sale by a mortgagee to a company in which he was at the time a shareholder was not warranted under the ordinary power of sale, and held that in law such a sale was allowable. They considered that the circumstances of the transaction in the present case were such as threw on the defendant company the burden of showing that the sale was in fact a fair and honest one, and they came to the conclusion that the defendant company had fully succeeded in showing that. They therefore dismissed the appeal.

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} CHARLES v. BURKE.

Will—General Bequest—Power of Revocation and Appointment contained in Settlement—Wills Act (1 *Vict. c.* 26), *s.* 27.

Testator, by will made in 1879, bequeathed the residue of his personal estate to his executors upon certain trusts, and, by an indenture of settlement made in 1880, assigned certain personal estate to trustees upon trust that they should deal with the same in such manner as the settlor should, by any writing or writings, revocable or irrevocable, but not by his last will or testament, or any codicil thereto, unless he should expressly refer to the said trust fund, order and direct, by which writing or writings the trusts of the said indenture might be absolutely revoked, annulled, altered, varied, or otherwise dealt with, at the free will and pleasure of the settlor; and, subject thereto, should pay the income of the trust fund to the settlor during his life, and after his death should stand possessed of the said trust fund upon certain trusts in favour of the plaintiff and her children, if any.

The testator died in 1886, having made three codicils

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to his will after the date of the settlement, none of which affected the residuary bequest in his said will.

This was an originating summons taken out by the plaintiff raising the question whether the residuary bequest in the will operated as an execution of the power of appointment in the settlement.

Marten, Q.C., and *Warrington* for the plaintiff.

Renshaw, Q.C., and *Allen* for the executors.

Millar, Q.C., and *Bramwell Davis* for the trustees of the settlement.

KAY, J., said that on the general question which had been argued—that, no matter what restriction was put upon the power in the settlement, still, if the objects of the power were unlimited, a general bequest in the will of the donee of the power must, by virtue of the Wills Act, s. 27, operate as an execution of the power—he would say nothing, in consequence of the recent decision in *In re Marsh*, 57 Law J. Rep. Chanc. 639; L. R. 38 Chanc. Div. 630, though, in his opinion, it was open to very considerable argument; but the present case was a different one, as it was necessary for the settlor to execute the power of revocation contained in the settlement in order to execute the power of appointment; and the authorities established that, though by virtue of section 27 a general bequest in a will operates as an exercise of all general powers of appointment, yet it does not operate as a revocation under a power of revoking a previous instrument. There must be a declaration that the general bequest in the will did not operate as an exercise of the power.

Chancery Division. KAY, J. Dec. 13. } THE BRITON MEDICAL, &C., LIFE ASSOCIATION *v.* THE BRITANNIA FIRE ASSOCIATION.

Practice—Pleading—Instigation and Improper Motives alleged—Particulars—Adjournment into Court—Rules of Court, 1883, *Order XIX., rules* 6, 7.

This was an action brought by the plaintiffs against the defendant association and the liquidator in their winding up, claiming that notwithstanding a certain order made in the winding up the defendant association was liable to pay a sum of over 30,000*l.* to the plaintiffs.

The order in question had been made on the application of the liquidator postponing payment of the plaintiffs' debt.

The plaintiffs pleaded in this action that the directors of the plaintiffs' association were shareholders in the defendant association, and had instigated and concurred in the liquidator's application for the purpose of escaping from their liability to calls which as members of the defendant association they would be under if the plaintiffs' claim were enforced; and that the defendant association and their solicitors knew that the said directors were shareholders of the defendant association, and also the improper motives which actuated the said directors.

This was a summons taken out by the defendants asking that the plaintiffs might be ordered to give particulars whether the application for the order was instigated by the directors verbally, or in writing, or otherwise, and, if verbally or otherwise, the words used, and the means used or adopted by the directors to instigate such application, stating in detail how such application was instigated, and also what were the improper motives actuating the directors, and how and in what manner were such motives known to the liquidator.

Renshaw, Q.C., and *Beddall* for the summons.

Marten, Q.C., and *Chadwick Healey* for the plaintiffs.

KAY, J., said that he had to draw the line between requiring the plaintiffs to make a sufficient statement to prevent the defendants being taken by surprise at the trial and requiring them to disclose the evidence on which they intended to rely; that he felt great difficulty in so doing, and found no case to guide him; the order would be that the plaintiffs should state whether the alleged instigation was verbal or in writing, and, if verbal, by whom it was made, and, if in writing, the date of such writing, and that the plaintiffs should also give particulars of the improper motives which were alleged to have actuated the directors. His lordship also stated that the application ought to have been dealt with in chambers and not adjourned into Court.

Chancery Division. CHITTY, J. Dec. 19. } *In re* UNITED KINGDOM LAND AND BUILDING ASSOCIATION (LIM.).

Company—Winding up—Solicitor to Liquidator—Costs—Solicitors' Remuneration Act, 1881—*General Order under, clause* 6.

On November 1, 1887, H. was duly appointed solicitor to assist the liquidator in his duties. On November 2, H. served the liquidator, under clause 6 of the General Order made in pursuance of the Solicitors' Remuneration Act, 1881, with notice that he elected that his remuneration should be under schedule II. The liquidator, believing that he had power so to do, accepted this notice and continued to employ H. in the winding up. H.'s remuneration under schedule II. proved to be more than it would have been under schedule I. (scale fees), but on taxation the taxing master declined to allow him more than the amount he would have been entitled to under schedule I.

The liquidator now applied to vary the taxing-master's certificate, and by a second summons (*nunc pro tunc*) asked for leave to pay H. his costs for work done according to schedule II. out of the assets.

Romer, Q.C., and *W. M. Cann* for the application.

CHITTY, J., held that it was the duty of the official liquidator, as an officer of the Court, to protect the assets of the company and to get the work done as reasonably as possible; that on being served with such a notice by the solicitor under clause 6 he ought to have applied to the judge in chambers for advice, when the matter of the solicitor's remuneration would have been properly looked into; that the taxing-master had acted quite rightly, and that both summonses must therefore be dismissed; and further declined to allow the applicant to take his costs out of the assets.

Chancery Division. NORTH, J. Dec. 20. } POLLARD *v.* THE PHOTOGRAPHIC COMPANY.

Fine Art Copyright Act (25 & 26 *Vict. c.* 68), *s.* 1—*Photographic Portrait—Negative—Rights of Photographer.*

The plaintiff, Mrs. Pollard, had her portrait taken by photography at the defendants' shop at Rochester, and was supplied with a number of the photographs, which

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were of cabinet size and in vignette style, and paid for them. Nothing was said with regard to the negative, which was retained by the defendants, and they subsequently printed photographs from it, and after adding the words 'A merry Christmas' above the portrait, and 'A happy New Year' beneath it, they exposed them for sale in their shop window, and sold them as Christmas cards. The present action was then brought by Mrs. Pollard and her husband. This was a motion for injunction, which, by consent, was treated as the trial of the action.

Cozens-Hardy, Q.C., and *Silvester* for the plaintiffs.

Emden for the defendants.

NORTH, J., held that the bargain between the customer and the photographer included, in the absence of any express provision to the contrary, an implied agreement that photographs were only to be printed from the negative for the use of the customer, and that the photographer was not entitled to print copies of the photograph for his own use, or for exhibition or sale to any one but the customer, unless the authority of the customer were given either expressly or by implication, and his lordship granted an injunction to restrain the defendants from so doing.

Chancery Division. NORTH, J. Dec. 21. } *In re* THOMPSON & Co.'s APPLICATION.

Trade-mark—Fancy Word—Patents, Designs, and Trade-marks Act, 1883, *s.* 64.

This was an application by Messrs. Thompson & Co., of the Manor Works, Wolverhampton, for the registration of the word 'Manor' as a trade-mark not used before the passing of the Trade-marks Registration Act, 1875, in respect of tin-plates. The comptroller had refused to register the mark on the ground that it was not a fancy word within the meaning of the Act.

Cozens-Hardy, Q.C., and *T. Terrell*, for the application, urged that the case was not governed by *Re Van Duzer*, 56 Law J. Rep. Chanc. 370; L. R. 34 Chanc. Div. 623, and that the word was not a geographical word, seeing that it was merely the most prominent word in the name of the applicants' own works, which they were perfectly able to alter at any time.

Ingle Joyce, for the comptroller, was not called on.

NORTH, J., refused the application, on the ground that the word was not obviously not intended to be descriptive.

Chancery Division. KEKEWICH, J. Dec. 21. } THE MANCHESTER AND LIVERPOOL BANKING COMPANY (LIM.) *v.* PARKINSON.

Practice—Injunction—Undertaking by Plaintiff—Limited Company.

In this case the plaintiff company applied for and obtained *ex parte* an *interim* injunction against the defendant, upon their undertaking to answer in damages and to accept service of short notice of motion to discharge the order. The registrar raised the point whether the undertaking should not be given under the signature of a director of the plaintiff company.

Eve for the plaintiff company.

KEKEWICH, J., said that, as he understood the present practice, no undertaking need be given by an officer of the company, but it was sufficient for the undertaking to be expressed in the order as being given by the plaintiff company by their counsel.

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House of Lords. July 2, 9. Dec. 18. } SPICER *v.* MARTIN.

Lease—Restrictive Covenant—Representation as to Use of Adjoining House—Injunction.

This was an appeal from a decision of the Court of Appeal (reported 56 Law J. Rep. Chanc. 393), which affirmed one of BACON, V.C.

Rigby, Q.C., and *E. Ford* for the appellant.

Sir H. Davey, Q.C., and *Millar, Q.C.* (*A. R. Kirby* with them), for the respondent.

Cur. adv. vult.

Their LORDSHIPS (LORD WATSON, LORD FITZGERALD, and LORD MACNAGHTEN) dismissed the appeal, with costs.

HIGH COURT OF JUSTICE.

Chancery Division. Kay, J. Jan. 14. } JAMES *v.* KERR.

Champerty—Mortgage—Collateral Advantage taken by Mortgagee—Bonus Payable in Event of Succeeding in Litigation.

The plaintiff, who was in poor circumstances, was co-heir, with one Green, to J. H. Morgan, who died in 1883. An action was instituted to propound an alleged will, to which the plaintiff in this action and Green were defendants. A country solicitor named Jones was acting for Green in the probate action, and the plaintiff, through the agency of Jones, borrowed 60*l.* from the defendants in this action on the security of his interest as co-heir. The security provided that the plaintiff should give his promissory note for the sums advanced with interest at 5*l.* per cent.; that he should employ the London agent who was acting for Jones in the probate action, and would not remove him without the consent of the defendants; and that if the plaintiff's title should be established he would, within three months thereafter, pay to the defendants 'by way of bonus' 250*l.*; that the defendants should make such further advances as they should think fit to meet any further necessities of the plaintiff, to be applied in or towards the costs and disbursements of the probate action, for which the plaintiff was also to give a promissory note; but the defendants were not obliged to make such advances; and the security also charged the advances and interest and bonus on the plaintiff's interest as co-heir in the land of the intestate.

The Probate Division established the will, but their judgment was reversed by the Court of Appeal, and the reversal affirmed by the House of Lords.

40*l.* further advances had been made by the defendants; but these had not been applied in payment of the costs of the probate action, the necessary disbursements having been made by Green.

The plaintiff now sought to redeem on payment of 100*l.* and interest alone, on the ground that payment of the bonus could not be enforced as it amounted to champerty, and was also an unfair collateral advantage taken by mortgagees from a person in a necessitous condition and in the position of an expectant heir.

Marten, Q.C., Phillpotts, and *Whateley* for the plaintiff.

Renshaw, Q.C., and *Yate-Lee* for the defendants.

W. C. Fooks for other parties.

KAY, J., held that the stipulation for the bonus was void as champerty, and also as an unfair collateral advantage taken by the mortgagees, and declared that

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the mortgage must stand as a security for 100*l.* and interest alone, and gave judgment for redemption on this footing.

Chancery Division. CHITTY, J. Dec. 20. } THE TRADE AUXILIARY COMPANY AND OTHERS *v.* THE MIDDLESBROUGH, &c., TRADESMEN'S PROTECTION ASSOCIATION.

Copyright—Periodical—Joint Employers—Joint Right of Action—Copyright Act, 1842 (5 *&* 6 *Vict. c.* 45), *s.* 18.

The plaintiffs, the registered proprietors of a periodical known as *Stubbs's Weekly Gazette*, the registered proprietors of the *Commercial Compendium*, and the registered proprietors of *Perry's Gazette*, having joined in an action, moved for an *interim* injunction restraining the defendant from pirating lists of bills of sale, &c., published in the three above-mentioned periodicals.

It appeared that the plaintiffs at their joint cost employed the same persons to compile the bills of sale, &c.

The defendant, in resisting the motion, contended *inter alia* that the plaintiffs, being registered severally, could not, under section 18 of the Copyright Act, 1842, club together and employ the same author or authors, and then set up three co-ordinate copyrights in the same matter.

Romer, Q.C., and *R. M'Kenna* for the plaintiffs.

Maidlow for the defendant.

CHITTY, J., said that under section 18 the author of the work, who was the *primâ facie* proprietor of the copyright, might transfer it for a limited period to the publisher of the periodical for whom it had been composed. The registration of the proprietor was only a condition precedent to the right of suing. He could find nothing in the Act which could support the defendant's contention. There was nothing which prevented the author from transferring to separate transferees, or which prevented such transferees from joining as plaintiffs; and to hold otherwise would be most injurious to authors. The applicants were entitled to an injunction.

Chancery Division. STIRLING, J. Dec. 13, 20. } *In re* PARK. COLE *v.* PARK.

Solicitor and Client—Costs—Taxation—Delivery of Bill for more than a Year—Solicitors Act (6 *&* 7 *Vict. c.* 73, *s.* 37).

A claim was carried in in the administration of the estate of C. P. by a firm of solicitors for a sum of 251*l.*, the balance alleged to be due on several bills of costs delivered to the deceased.

The bills had been delivered more than a year before the death of C. P., no objection had been raised by him to the amount, and a sum of 200*l.* had been paid by him on account of the total sum appearing due upon the bills.

The claim was disputed by the executor of C. P., and the bills were referred to a taxing-master by the chief clerk. No case for special circumstances under the Solicitors Act was made by the executor.

The matter subsequently came before the judge in chambers, who directed that the chief clerk should examine the bills, and if necessary should refer them to a taxing-master.

The claimants were not satisfied with this decision, and upon an application to the judge as to the proper course to be pursued he directed the matter to be set down in the list of adjourned summonses.

The matter now came on for hearing.

Grosvenor Woods for the claimants.

Graham Hastings, Q.C., and *Bardswell* for the executor.

STIRLING, J., held, notwithstanding *Anderson* v. *May*, 2 Bos. & P. 237, that the delivery of the bills for more than a year without objection on the part of the deceased was not conclusive as to the reasonableness of the items; and acting under the general jurisdiction of the Court in dealing with disputed claims his lordship referred the bills to a taxing-master, not for taxation, but for investigation, adding a direction that the taxing-master was to confine his attention to certain specified items, to be marked in red ink, which appeared to require explanation.

Chancery Division. STIRLING, J. Jan. 11. } BOALER *v.* BRODHURST.

Company—Shareholder—Not on Register—Right to Sue.

This was a motion by the equitable owner of shares in the Briton Medical Life Insurance Company for an *interim* injunction restraining the defendants until the trial of the action from acting as directors of the company, and for a receiver.

The defendants raised a preliminary objection that the plaintiff was not entitled to sue, as his name was not upon the register. It appeared that the shares in respect of which he claimed the right to sue were registered in the name of one Sanders, who had been held by the Court of Appeal to be a trustee of them for the plaintiff. Sanders had been made a defendant to the action.

Young, for the plaintiff, relied upon *The Great Western Railway Company* v. *Rushout*, 5 De G. & S. 290, where it was held that a shareholder not upon the register, but having his trustee before the Court as a defendant, was entitled to sue to protect his property.

Graham Hastings, Q.C., and *Chadwyck-Healey*; *Buckley, Q.C.*, and *Danckwerts* for the defendants.

STIRLING, J., said that he was not prepared, in the face of the authority cited, to hold that merely because the plaintiff was not upon the register he was precluded under all circumstances from being heard. Here the plaintiff's right to be upon the register was seriously disputed; but he had brought his action, and it might be that such a motion as was now made would succeed, but it was only an overwhelming case which would induce the Court to make an *interim* order. There was no such overwhelming case here, and the motion would, therefore, stand over till the trial.

Chancery Division. STIRLING, J. Jan. 12. } *In re* MEACOCK. MEACOCK *v.* MEACOCK.

Annuity—Appropriated Fund—Consols—Conversion—Right of Annuitants to further Security—National Debt Conversion Act, 1888 (51 *&* 52 *Vict. c.* 2), *s.* 20 (3).

This was a petition for the payment out of Court of the residue of this estate. There were two annuitants, the annuities being secured by a sum of money invested

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in Consols by an order of the Court. The National Debt Conversion Act, 1888 (51 & 52 Vict. c. 2), s. 20, subs. 3, provides as follows: 'Where, in execution of any trust . . . . any stock has been appropriated to provide an annuity, and is under this Act converted into or exchanged for new stock, the trust . . . . shall, so far as relates to the payment of the annuity, be deemed to be executed or performed by the payment of the dividends on the new stock: but nothing in this section shall affect any power of any Court or other authority to make any order as to the application of capital in such cases.' It was contended on behalf of the annuitants that, having regard to the chances or otherwise as regards Consols, they were entitled to be secured against any such conversion previous to distribution of the residue or to have the annuities secured by the new stock. It was argued that the above-mentioned section did not apply, because Consols were not converted by the Act, there being only an option to convert given to holders of Consols.

Graham Hastings, Q.C., and *Bakewell* for the petitioners.

Alfred Emden for the annuitants.

Ashton Cross for the trustees.

Bardswell for other parties.

STIRLING, J., held that the annuitants were not entitled to any further security, but he allowed a declaration to be inserted in the order that in case of any deficiency arising from conversion of the Consols or otherwise the annuitants should be entitled to resort to the *corpus* of the appropriated fund.

Chancery Division. STIRLING, J. Jan. 15. } BURD *v.* BURD.

Costs—Taxation—Scale Charge—Remuneration for Conducting Abortive Sale by Auction—Solicitors' Remuneration Act, 1881—*General Order II., Schedule* 1, *Part* 1, *rules* 2, 11.

This was a motion in substance to refer back a bill of costs to the taxing-master for reconsideration. In the course of the proceedings in an administration action real estate was, in February, 1882, put up for sale by auction with the sanction of the Court, but the sale proved abortive. In 1883, after the Solicitors' Remuneration Act had come into operation, the property was sold by private treaty.

Schedule 1, part 1, to the General Order under the Solicitors' Remuneration Act, 1881, prescribes a scale of charges to be made by the vendor's solicitor for conducting a sale of property by auction, and provides that where the property is not sold the charges shall be calculated on the reserved price.

Rule 11 of schedule 1, part 1, provides that the scale for conducting a sale by auction shall apply only in cases where no commission is paid by the client to an auctioneer.

The remuneration of the auctioneer on the occasion of the abortive sale of February, 1882, consisted of a lump sum paid by the client. The taxing-master disallowed the whole of the solicitor's charges for the conduct of the abortive sale.

On behalf of the applicants it was contended that the *ad valorem* scale provided by schedule 1, part 1, did not apply, and that the applicants were entitled to remuneration under the system which prevailed before the passing of the Act as altered by schedule 2, in accordance with the decision of the House of Lords in *In re Newbould*, L. J. W. N. 1888, p. 145. On the other hand, it was contended that the *ad valorem* scale applied, because the sum paid to the auctioneer was not a commission.

S. Hall, Q.C., and *E. S. Ford* for the motion.

Kirby and *Farwell* for the several respondents.

STIRLING, J., held that the sum paid to the auctioneer was included in the word 'commission,' and adopted the observations of Cotton, L.J., in *In re Wilson*, 55 Law J. Rep. Chanc. 627; and his lordship referred the whole bill back to the taxing-master for reconsideration on the footing of the decision of the House of Lords in *In re Newbould*.

Queen's Bench Division. Jan. 11, 12. *Ex parte* DYKE. *Ex parte* DUNSTAN. *Ex parte* WATNEY. *Ex parte* GRIMSTON. *Ex parte* DE WETTE.

Local Government Act, 1888 (51 & 52 *Vict. c.* 41), *s.* 75—*Municipal Elections* (*Corrupt and Illegal Practices*) *Act*, 1884 (47 & 48 *Vict. c.* 70), *ss.* 13, 14, 16, 20—*Illegal Practice—Application for Relief—Costs.*

Application was made in these and numerous other cases to the Court by candidates for the office of county councillor and others for relief, under section 20 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, from the consequences of illegal practices and employment as defined by sections 13, 14, and 16 of the same Act, on the ground of inadvertence. These sections are incorporated with the Local Government Act, 1888, by section 75 of that Act.

The COURT (HUDDLESTON, B., and WILLS, J.) granted relief on affidavits of notice of the application to the returning officer, the opposing candidates, and publication in local newspapers and by posters, to all the candidates applying, except in the case of *Ex parte De Wette*. In that case a reprint had been published by the candidate applying for relief, without the printer's name and address, as required by the above-mentioned section 14 of the Act of 1884, in the form of a bill, of a report of proceedings at a meeting held by another candidate. Relief was refused on the ground that the publication was scurrilous. In reference to the applications of persons other than candidates, the Court pointed out that relief could only be granted to persons who had been guilty of an illegal practice, hiring, or employment, and therefore where an offence was created, as in the case of printers issuing bills without appending their name and address, which is not defined by the Act as an illegal practice, hiring, or employment, no relief could be granted by the Court. The costs of returning officers or candidates appearing to oppose the applications, but not the costs of opposing electors, were ordered to be paid by the applicants.

Queen's Bench Division. Jan. 14. } MOORE *v.* GIMPSON AND ANOTHER.

Negligence—Workman and Foreman of Works—Defect in Condition of Works—Defect Remedied Negligently—Employers' Liability Act, 1880 (43 & 44 *Vict. c.* 42), *s.* 2, *subs.* 1.

This was a motion by the defendants, ironfounders and engine-makers, in an action brought against them

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in a County Court under the Employers' Liability Act, that judgment for the plaintiff be reversed and entered for the defendants, or that a new trial be had. It appeared that a fire had broken out on the defendants' premises, and that they had employed a contractor to execute the necessary repairs. Whilst the work of reinstatement was being carried out the plaintiff and other foundry-men were working in workshops under or near a wall which had been left standing, and had been a portion of some building destroyed by the fire. On the occasion in question the plaintiff called the attention of the foreman of the works to the fact that this wall was swaying dangerously from the effect of a high wind. Whereupon the foreman, having ordered the plaintiff and the rest of the men to another part of the works, pointed out the danger to the building contractor, who undertook to shore it up so as to make it safe, and immediately brought all his men and erected such props as in his opinion were necessary. The foreman, having been informed that the wall was at length secure, but without examining it himself, ordered the plaintiff and the others back to their work in the shops, when, after they had been at work for three-quarters of an hour, the upper portion of the wall, which was above the props erected by the contractor, fell and caused various injuries to the plaintiff and others employed below.

The learned County Court judge left it to the jury to say whether or not there had been negligence on the part of the foreman in not personally satisfying himself that the wall was safe, and the jury returned a verdict for the plaintiff.

Field, for the defendants, submitted that the foreman had not been guilty of negligence.

Sills, for the plaintiff, contended that not only was the foreman negligent, but also the contractor, and that if the contractor was negligent it was no excuse for the foreman or for the defendants, since this was a statutory liability. The foreman ought to have seen with his own eyes whether the wall was secure or not. Again, it must be a question for the jury whether the contractor was or was not a competent person to do the work of securing the wall.

The COURT (LORD COLERIDGE, C.J., and HAWKINS, J.) held that the defendants were entitled to succeed. The foreman saw the wall swaying, withdrew the workmen, and called the contractor to make it secure. The contractor then brought his whole staff of workmen, and, in his judgment, secured it. The only evidence suggested of negligence upon which the jury found was that the foreman did not himself go to look at the wall; but by calling, as he did, the only experienced person on the premises to make matters safe he had done all he could do. There was absolutely no evidence of such negligence on the part of the foreman or of the defendants as to render the latter liable.

Judgment for defendants; leave to appeal refused.

Queen's Bench Division. Jan. 16. } STRAKER BROTHERS & Co. *v.* REYNOLDS AND ANOTHER.

Practice—Documents in Possession of Person not a Party to Action—Order for Attendance—Production —Inspection—Rules of Court, 1883, *Order XXXVII., rule 7.*

In an action brought under subsection 11 of section 85 of the Metropolitan Buildings Act, 1855 (18 & 19 Vict. c. 122), for the purpose of having an award made under that Act relating to a party wall and certain works rescinded, the plaintiffs applied under Order XXXVII., rule 7, for liberty to inspect the books of two firms who were strangers to the action, mentioned in the defendants' particulars containing entries of all items of work done and materials supplied for the works, and for an order for the production of the entries and books at the office of the plaintiffs' solicitors.

DENMAN, J., having refused to make the order at chambers, the plaintiffs appealed and obtained leave *ex parte* to serve the third parties with notice of the appeal.

Order XXXVII., rule 7, provides that 'the Court or a judge may in any cause or matter at any stage of the proceedings order the attendance of any person for the purpose of producing any writings or other documents named in the order which the Court or judge may think fit to be produced, provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial.'

Jeune, Q.C., and *Bray* for the plaintiffs.

Blake Odgers for the defendants.

Bartley Dennis and *H. Fraser* for the third parties.

The COURT (HUDDLESTON, B., and WILLS, J.) held that as there was prior to Order XXXVII., rule 7, no power under 1 Wm. IV. c. 42, s. 5, or the Common Law Procedure Act, 1854, ss. 46, 47, to order the production or inspection of documents in the hands of third parties, the rule must be strictly limited to the meaning of the words actually used, and gives no power to order inspection as distinct from production; and that the appeal must be dismissed.

Appeal dismissed.

Probate, Divorce, and Admiralty Division. Jan. 15. } IN THE GOODS OF JOHN THOMAS AGNEW PATRICK.

Probate Division—Non-contentious Business—Order LIV., rule 21.

By Order LIV., rule 21, 'any person affected by any order or decision of a master may appeal therefrom to a judge at chambers. Such appeal shall be by way of indorsement on the summons at the request of any party, or by notice in writing to attend before the judge without a fresh summons within four days after the order complained of, or such further time as may be allowed by a judge or master.'

Appeal by way of motion to the Court against a decision of one of the registrars of the Probate Division in chambers on a matter of common form.

Inderwick, Q.C., for the respondent: Order LIV., rule 21, is conclusive. This appeal must be to the judge in chambers, and notice must be given within four days.

Middleton, contrà: This is on a matter of common form, to which the rules and orders do not apply.

BUTT, J., held that Order LIV., rule 21, applied even to matters of common form in the Probate Registry.

Appeal dismissed.

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HUNT *v.* FINEBURG AND OTHERS.

Practice—Change of Solicitors—Duty of Solicitor to give Associate Notice of Change.

Appeal from the Divisional Court.

Action for infringement of the copyright in a song of which the plaintiff was the owner and composer, and which was sung by one of the defendants in a music-hall of which the other defendants were the owners.

At the trial before HUDDLESTON, B., the name of one Grayston appeared as solicitor on the record. Grayston had some time previous to the trial been suspended for two years for allowing one Harry Wall to act as solicitor in his name. The plaintiff had before the trial changed solicitors, and the notices required by Order VII., rule 3, had been given, but no notice of the change had been given to the associate. The present solicitor acted for the plaintiff at the trial. The action was dismissed by Huddleston, B., on the ground that there was no qualified solicitor on the record.

The Divisional Court (LORD COLERIDGE, C.J., and MANISTY, J.) reinstated the case upon payment by the plaintiff of the costs thrown away.

The plaintiff in person appealed.

M'Call and *Herbert Jacobs* for the defendants.

Their LORDSHIPS dismissed the appeal, being of opinion that although the notices required by Order VII., rule 3, had been given, yet the rule only simplified the process of effecting a change of solicitor, and that the solicitor was bound in the interests of his clients to give notice of the change, after it had been effected, to the associate, in order that the Nisi Prius record might be altered.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
LOPES, L.J.
Jan. 21.

In re GAITSKELL.

Lunatic—Sale of Lunatic's Share to Co-owner—Settled Land Act, 1882, *ss.* 58, 62.

Adjourned certificate.

M. G., a lunatic, was entitled as tenant in tail in possession to an undivided share of certain real estate.

A provisional agreement had been entered into for the sale of the lunatic's share to one of the co-owners, but before the agreement could be confirmed the committee died.

The master certified that the person proposed to be appointed committee of the estate was a proper person to be appointed, and that it would be beneficial to the estate of the lunatic that the proposed committee should be at liberty to take proceedings under the Settled Land Act, 1882, for effecting the sale of the property upon the terms of the provisional agreement.

The matter was adjourned into Court by FRY, L.J., as his lordship doubted whether the Court ought to sanction the sale of a lunatic's share of real estate to a co-owner having regard to *In re Weld*, L. R. 28 Chanc. Div. 514.

Cozens-Hardy and *L. Field*, for the applicant, referred to sections 58 and 62 of the Settled Land Act, and contended that *In re Weld* was distinguishable, as it was a decision under the Lunacy Regulation Act, 1853.

Their LORDSHIPS authorised the committee to take proceedings under the Settled Land Act for the purpose of selling the lunatic's share to the co-owner, but not for the purpose of carrying into effect the provisions of the original contract.

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HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
Jan. 12.

In re GROSSMITH'S TRADE-MARK.

Trade-mark—Abandonment—Registration—Evidence—Descriptive Word—Patents, &c. Act, 1883, *ss.* 64, *subs.* 3, *s.* 73.

This was an application for the registration of the word 'Emollio' in respect of an article of perfumery. The applicant had used the word since 1881 in connection with a perfumed cream. His father, who died in 1867, had in the same business and for the same article used the word. In 1870 the applicant destroyed all his labels with the word upon them, and it was never subsequently used by him upon any perfumed cream. Since 1881 the applicant had sold a solid tablet inscribed 'Emollio tablet, registered.' Certain price lists of perfumery dealers, issued in 1874 and subsequently, were produced, in which 'Grossmith's Emollio' and the 'Emollio tablet' was mentioned.

The registration was opposed by persons who had sold a soap by the name of 'Emolline,' on the ground that the use of the word 'Emollio' as a trade-mark employed before 1875 had been abandoned.

Marten, Q.C., Sebastian, and *Newson* for the applicant.

Renshaw, Q.C., and *John Cutler* for the respondents.

KAY, J., held that there had been abandonment, not only by cessation of user, but also by the destruction of the labels in 1870. It was doubtful, also, whether a word like this, descriptive of the effect of an article, could be used as a trade-mark within the meaning of section 64, subsection 3, of the Act, and whether it would not be calculated to deceive within the meaning of section 73.

Chancery Division.
KAY, J.
Jan. 19.

In re THE BRITISH FLAX PRODUCERS' COMPANY.

Company—General Meeting—Resolution to Wind up Voluntarily—Articles of Association—Poll.

Petition.

This was a creditors' petition for winding up the company. At an extraordinary general meeting the chairman declared that a resolution in favour of a voluntary winding-up was carried. A poll was demanded and the chairman decided to take a poll there and then. The eighth article of association said: 'All questions at general meetings shall be decided by a show of hands unless a poll be demanded, in which case such poll shall be held at a time and place to be fixed by the directors within seven days from the date of the meeting.'

St. John Clerke for the petitioner.

George Henderson for shareholders in support of the petition.

Alexander Young, for the company, asked for a supervision order, and contended that the poll had been rightly taken, on the authority of *In re The Chillington Iron Company*, 54 Law J. Rep. Chanc. 624; L. R. 29 Chanc. Div. 159.

KAY, J., distinguished that case, on the ground that by the articles of association of the Chillington Iron Company the poll was to be taken 'in such manner as the chairman shall direct.' The proceedings in this case were altogether illegal, and there must be the usual compulsory order.

Chancery Division.
NORTH, J.
Jan. 11.

DAVIS *v.* GALMOYE.

Practice—Leave to issue Writ of Attachment—Notice of Motion.

In this case a writ of attachment had been issued after an appeal against the order for leave to issue it, which was given on summons, had been brought unsuccessfully (L. R. 39 Chanc. Div. 322). The party to be attached now moved to suspend the enforcement of the order, on the ground, among others, that the application for leave to issue the writ had not been made, as it should have been, on notice of motion.

Oswald for the motion.

Upjohn, contrà.

NORTH, J., said that there was no positive rule that such an application must be made on notice of motion, and that it would be unfortunate if it were so, and he refused the motion on all grounds.

Chancery Division.
NORTH, J.
Jan. 12.

THORN *v.* THE CITY RICE MILLS (LIM.)

Mortgage—Debenture—Condition—Place for Payment of Interest—Demand for Payment—Foreclosure.

This was an action for foreclosure of the property of the defendant company, based on a debenture conditioned that the principal sum secured should be immediately payable if the half-yearly interest should not be paid within fourteen days after the day appointed. Such payment was to be made at the Royal Exchange Bank or the defendant company's offices. The interest had been paid from time to time by cheques posted to the plaintiff, but in November, 1888, this was accidentally omitted, and the plaintiff brought his action, though he had made no demand for payment at either of the places named in the debenture. A motion for a receiver was now made.

Cozens-Hardy, Q.C., and *E. B. Cooper* for the plaintiff.

Higgins, Q.C., and *Dunham* for the defendants.

NORTH, J., refused to appoint a receiver, saying that the plaintiff ought to have applied for payment at one of the places named, and that there had been no default.

Chancery Division.
NORTH, J.
Jan. 18.

PHILLIPS *v.* KEARNEY.

Practice—Defendant not Appearing—Delivery of Statement of Claim to him personally—Notice of Motion for Judgment—Filing of Statement of Claim—Order XIX., rule 10; *Order XX., rule* 1.

This was an action for a declaration that a certain deed of conveyance ought to stand as a mortgage only of the property comprised in it.

All the defendants, except one named T. Phillips, appeared in the action and pleaded; but Phillips did not appear or plead, though both the writ and the statement of claim were served on him personally.

The plaintiff sought to have notice of motion for judgment against him set down for trial with the action; but the registrar refused to do so on the ground that as Phillips had not appeared the statement of claim ought to have been filed as against him.

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J. A. Cross mentioned the matter to the Court, and referred to *Renshaw* v. *Renshaw*, 49 Law J. Rep. Chanc. 127.

NORTH, J., directed the notice of motion to be set down with the action, the defendant in default having been personally served with the statement of claim.

Chancery Division.
NORTH, J.
Jan. 19.
In re LEVY. MYERS *v.* ISAACS.

Practice—Costs—'Term Fee'—Rules of Supreme Court—Appendix N—Adjourned Summons.

A question was raised on this summons as to the circumstances under which a 'term fee' is chargeable under the Rules of the Supreme Court (Appendix N.). It appeared that the only proceeding or step in the action taken by the solicitor had been the payment of a sum of money into Court to the credit of the action. The solicitor had treated this as a 'proceeding in the cause or matter' within the rule, and had charged a 'term fee' accordingly.

The taxing-master allowed the fee, and this was a summons to review the taxation.

Cozens-Hardy, Q.C., and *Wheeler* for the summons.

Everitt, Q.C., for the solicitor.

NORTH, J., said he had great difficulty in saying what was a 'proceeding' within the meaning of the rule. He thought, however, that the steps that had to be taken in order to procure the payment of money into Court, such as the preparation of the affidavit and the procuring it to be sworn, and the attending for directions, were 'a proceeding in a cause or matter' within the Rules. Whether the solicitor was, however, entitled to charge a term fee or not depended upon what was the settled practice, and, as the taxing-master had allowed the fee, he did not see his way to disallowing it.

Chancery Division.
STIRLING, J.
Jan. 22.
In re LOVE. HILL *v.* SPURGEON.

Costs—Taxation—Pending Business—Right to Elect—Time for Election—Scale Charges—Solicitors' Remuneration Act, 1881—*General Order, clause* 6.

This was a summons taken out by the plaintiff in an administration action asking that the taxation of his costs in the action, directed by an order dated in 1885, might be referred back to the taxing-master for reconsideration.

Judgment in the action was given in 1882, directing the usual accounts and inquiries as to the testator's real and personal estate, but the judgment contained no directions for the sale of the real estate. In the course of the action certain sales and leases were effected by the plaintiff under the direction or with the sanction of the Court. The several transactions referred to were dealt with by separate orders.

The business relating to these sales and leases was in every case commenced before the passing of the Solicitors' Remuneration Act, and was concluded after the date when that Act and the General Order made thereunder came into operation—viz. January 1, 1883.

Clause 6 of the General Order provides that in all cases to which the scales prescribed in schedule 1 hereto shall apply, a solicitor may, before undertaking any business by writing under his hand communicated to the client, elect that his remuneration shall be according to the present system, as altered by schedule 2 hereto; but if no such election shall be made, his remuneration shall be according to the scale prescribed by this order.

On January 2, 1883, the plaintiff's solicitor gave notice to his client of his intention to charge his costs under the old system as altered by schedule 2. In the taxation of the plaintiff's costs, the taxing-master selected for taxation the charges relating to five transactions only as test cases, in order to ascertain the opinion of the Court. Those he taxed according to schedule 1, on the ground (1) that there was no option to elect in the case of pending business; and (2) that the election was too late.

In cases 1 and 2 work was done by the solicitor after the General Order came into operation and before the notice of election was communicated to the client; in cases 3 and 4 it did not appear whether any work had been done in the interval or not; and in case 5 nothing was done in the interval.

E. Ford for the plaintiff.

S. Dickinson for the defendant.

STIRLING, J., held that the solicitor had a right to elect, although the business was commenced before the General Order came into operation; that the time for election was not the date when the General Order was made, but the date when it came into operation; but that the solicitor ought to have elected before doing any further business to which the scale charges applied. Under the circumstances his lordship considered that the charges relating to the several sales and leases should be dealt with separately, and accordingly he held that the taxing-master was right in cases 1 and 2 and that he was wrong in case 5; and with regard to cases 3 and 4 he directed an inquiry whether or not any work had been done by the solicitor after the coming into operation of the General Order and before the notice of election.

Chancery Division.
KEKEWICH, J.
Jan. 19.
THE MANCHESTER BANK *v.* PARKINSON.

Practice—Originating Summons—Order LV., rule 5a; Order L., rule 6—Foreclosure—Relief after Final Order—Possession—Injunction.

The plaintiffs, being equitable mortgagees, had obtained a final order for foreclosure of land in proceedings commenced by originating summons, by which possession of the mortgaged property was not asked. They now by subsequent motion in the same action applied for an order against the mortgagor for possession, and for an injunction to restrain him from removing certain fixtures from the mortgaged premises.

The mortgagor admitted his inability to redeem, but raised a question whether, under certain circumstances which had occurred, the foreclosure had not been opened. He further contended that the relief now asked could not be obtained after the final decree for foreclosure had been completed, and the action was at an end.

Warmington, Q.C., and *Eve* for the plaintiffs.

A. J. Powell for the mortgagor.

KEKEWICH, J., held that the plaintiffs were entitled to an order for possession, which would not affect the question of whether the foreclosure had been opened,

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and also to an injunction against removal of the fixtures, with an order for restoration of the fixtures already removed.

Queen's Bench Division. Jan. 15. } ARMSTRONG & Co. *v.* GASELEE AND ANOTHER.

Practice—Action for Damage by Collision—Preliminary Act—Tug and Tow—Collision between Tow and third Vessel—Action by Tow against Tug—Order XIX., rule 28.

This was an appeal on behalf of the defendants in the action from a decision of a judge at chambers refusing to order the plaintiffs to deliver a preliminary act under the provisions of Order XIX., rule 28.

The action was brought by the owners of a barge against the owners of a tug to recover the damages sustained by the barge by reason, as they alleged, of the defendants so negligently navigating their tug while towing the barge that they brought the latter into collision with a third vessel which was lying at anchor.

Order XIX., rule 28, provides that 'in actions in any Division for damage by collision between vessels' each of the parties shall, within a certain prescribed time, file a document, to be called a preliminary act, containing a statement of the particulars set out in the rule.

J. P. Aspinall, for the defendants, in support of the application, contended that the action being for damage by collision between vessels, the rule applied and a preliminary act must be filed.

Joseph Walton, for the plaintiffs, argued that the rule applied only where the two colliding vessels were the parties to the action.

The COURT (HUDDLESTON, B., and WILLS, J.) held that, having regard to the case of *The John Boyne*, 36 L. T. 29, in which Sir R. Phillimore decided that, where one of the parties was in such a position that he could not answer the questions put in the preliminary act, it is not reasonable to require the other to do so, and, having regard to the nature of the questions, which do not apply where the collision is not with the vessel sued but with a third vessel, the plaintiffs ought not under the circumstances to be required to deliver a preliminary act.

Appeal dismissed.

Queen's Bench Division. Jan. 17, 18. } IN THE MATTER OF AN ARBITRATION BETWEEN ISITT AND OTHERS AND THE RAILWAY PASSENGERS ASSURANCE COMPANY.

Insurance, Life — Construction of Policy — 'Injury caused by accident'—'Death from effects'—Death from Cold due to Debility caused by Accident.

This was a special case stated by an arbitrator, under the provisions of section 5 of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), in an arbitration under section 3 of the Railway Passengers Assurance Act, 1864 (27 & 28 Vict. c. cxxv.).

It appeared that a policy issued by the company provided that the company would pay the sum assured to the representatives of the assured, if the assured should 'sustain any injury caused by accident or violence within the meaning of the policy, and if the assured should die from the effects of such injury within three calendar months.' The assured met with an accident within the meaning of the policy, was confined to his bed, and while in a state of debility and restlessness caused by the injury caught cold, and died from pneumonia resulting from cold within the time specified. The cold and the fatal effects of the cold were due to the condition of health to which he had been reduced by the accident, and the deceased would not have died as and when he did if it had not been for the accident.

Henn Collins, Q.C. (with him *Dickens*), for the executors of the assured, contended that the death resulted from the injury caused by the accident within the meaning of the policy.

Finlay, Q.C. (with him *Gore*), for the company, took the preliminary point that the arbitration being compulsory under section 3 of the Railway Passengers Assurance Company's Act, 1864, the arbitrator had no power to state a case, and contended that the accident was not the proximate cause of death.

The COURT (HUDDLESTON, B., and WILLS, J.) held that as the relation between the parties was contractual and the submission to arbitration might be made a rule of Court (section 32 of the Act), the arbitrator had power to state a case under section 5 of the Common Law Procedure Act, 1854; that the words 'effects of such injury' were not limited to the proximate cause of the death; and, therefore, as the cold and the consequent death from pneumonia were the natural results of the accident, the company were liable under the policy.

Queen's Bench Division. Jan. 22. } RUMLEY *v.* WINN.

Practice—Reply to Counterclaim—Time for Delivery—Rules of Supreme Court, Order XXIII., rules 1, 2, 3, 4.

Motion by the defendant for judgment on the ground that the plaintiff had failed to deliver reply to the statement of defence and counterclaim within proper time.

In answer to the statement of claim the defendant, on November 27, delivered a defence and counterclaim. The plaintiff replied thereto on December 18.

Hertall, for the defendant, contended that the reply should have been delivered on or before December 7—*i.e.* within ten days of the delivery of the defence and counterclaim. He referred to Order XIX., rule 2; Order XXI., rules 6, 10; Order XXIII., rules 1, 2, 3, 4; Order XXIV., rule 1.

Scrutton, for the plaintiff, was not called upon.

The COURT (DENMAN, J., and STEPHEN, J.) held that the reply was delivered in time—*i.e.* within twenty-one days of the delivery of the counterclaim.

Motion dismissed.

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Table of Cases.

COURT OF APPEAL.

HIGH COURT OF JUSTICE.

COURT OF APPEAL.

Court of Appeal.
(Supplementary Case.)
LORD ESHER, M.R.
BOWEN, L.J.
FRY, L.J.
Jan. 15.

RICHARDSON *v.* HARRIS.

Bill of Sale—Statement of Consideration—Retention by Grantee of Moneys to meet Claims not presently due—Bills of Sale Act, 1878 (41 & 42 *Vict. c.* 31), *s.* 8.

Where the consideration for a bill of sale is stated to be money 'paid' by the grantee to the grantor, the consideration is not truly set forth within section 8 *of the Bills of Sale Act*, 1878, *where part of the money is retained by the grantee in respect of claims not then due and presently payable.*

Appeal from the judgment of MATHEW, J., at trial in Middlesex without a jury.

This was an interpleader issue to try the right of the plaintiff, as against the defendant, an execution creditor, to certain household furniture, which the plaintiff claimed under a bill of sale dated January 17, 1888, from one Hamilton, the execution debtor.

The defendant disputed the validity of the bill of sale on the ground that it did not 'set forth the consideration for which such bill of sale was given' within the meaning of section 8 of the Bills of Sale Act, 1878.

The bill of sale in question was stated to be made 'in consideration of the sum of 500*l.* to the said assignor paid by the assignee on or immediately before the execution of these presents.'

The facts were as follows: On January 6, 1888, a bill of exchange for 40*l.* accepted by Hamilton to the draft of the plaintiff, and held by the plaintiff, having become due, and a second bill for 80*l.* being about to fall due on January 17, Hamilton called upon the plaintiff for the purpose of procuring the renewal of the bills and also further advances of money. In order to procure the further advances, Hamilton gave to the plaintiff his wife's cheque, postdated January 23, for 95*l.* Thereupon, 10*l.* was agreed to be taken off the 80*l.* bill, and a fresh three months' bill for 70*l.* was given by Hamilton; 4*l.* was applied in respect of the 40*l.* bill, and a fresh three months' bill for that amount given; 7*l.* was taken as paid for getting this accommodation; 2*l.* 10*s.* was charged for discounting the cheque, and 71*l.* 10*s.* in cash was handed to Hamilton.

On January 13 the plaintiff agreed to purchase Hamilton's household furniture, which was the furniture in question, for the price of 500*l.*, but, as Hamilton desired to have the use of the furniture for three months, it was agreed that he should pay 25*l.* for this; and it was also agreed that 13*l.* should be charged for an inventory of the furniture to be prepared by the plaintiff.

On January 16, the plaintiff gave Hamilton 150*l.*, and on January 17, before the execution of the bill of sale, 107*l.*

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The furniture was taken in execution by the defendant whilst in the possession of Hamilton.

The plaintiff contended that under the above circumstances the consideration for the bill of sale was truly stated therein, being made up thus:—

	£	s.	d.
Bill at three months from January 6 .	70	0	0
" " " .	40	0	0
Payment on account of 80*l.* bill . .	10	0	0
Payment on account of 40*l.* bill . .	4	0	0
Charge for accommodation . .	7	0	0
Charge for discounting cheque . .	2	10	0
Cash	71	10	0
Charge for hire of furniture . .	25	0	0
Expenses of inventory . . .	13	0	0
Cash	150	0	0
Cash	107	0	0
	500	0	0

MATHEW, J., was of opinion that the consideration was not truly stated, and held the bill of sale to be invalid.

The plaintiff appealed.

Gainsford Bruce, Q.C., and *Tindal Atkinson* for the plaintiff.

Cooper Willis, Q.C., and *Cyril Dodd*, for the defendant, were not called upon.

The following cases were cited: *Ex parte The National Mercantile Bank, in re Haynes*, 49 Law J. Rep. Bankr. 62; *Hamilton* v. *Chaine*, 50 Law J. Rep. Q. B. 456; *In re Spindler, ex parte Rolph*, 51 Law J. Rep. Chanc. 88; *Ex parte Frith, in re Cowburn*, 51 Law J. Rep. Chanc. 473; and *Ex parte Challinor, in re Rogers*, 51 Law J. Rep. Chanc. 476 (note).

Their LORDSHIPS dismissed the appeal, being of opinion that upon the facts the case did not come within the principle stated in this Court in *The Credit Company* v. *Pott*, 50 Law J. Rep. Q. B. 106, and adopted by Bowen, L.J., in *Ex parte Johnson, in re Chapman*, 53 Law J. Rep. Chanc. 762—namely, that the statement of the consideration in a bill of sale is good within section 8 of the Bills of Sale Act, 1878, if, though not stated with strict accuracy, it is substantially accurate, or, in other words, if its true legal effect or its true business effect is stated. For though money retained to answer a debt due and presently payable by the assignor to the assignee may with substantial accuracy be said to have been paid by the assignee to the assignor, in the present case, both as regards the two bills for 40*l.* and 70*l.*, which did not fall due until the following April, and as regards the charges for the hire of the furniture and the preparation of the inventory, there being no debt due and presently payable, the moneys retained by the plaintiff could not with substantial accuracy or according to the legal effect of the transaction be said to have been 'paid' by him to Hamilton.

BOWEN, L.J., in delivering his judgment said: There is a difference between cases where bills of exchange are given in conditional payment of a debt and cases in which the only liability of the person by whom the bills are given is under the bills themselves. If money be due from A. to B., and a bill of exchange be given by A. to B. in respect of the debt, the situation of the parties is that there is a debt due by one to the other, and an agreement which suspends the debt conditionally; and when the bill matures the liability on the part of the debtor is both under the bill and in respect of the original debt. In a case of that sort the debt continues to exist all through. But the case is totally different where at the time the bill of exchange is given there is no existing debt—where the amount for which the bill is given is due, if at all, only under the bill. In such a case there is no debt due until the bill of exchange matures. There is no authority at all in English law for the contention that the party liable upon the bill can pay the amount of the bill before it becomes due. Payment to discharge a bill of exchange must be payment at or after the maturity of the bill. Payment before is a purchase of the bill. In the present case the current bills of exchange did not represent existing debts, and the debts under them would not accrue due and payable until the maturity of the bills. I do not think that it can be said that the retention of money to meet debts before they are due is payment in a business sense.

Appeal dismissed.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
LOPES, L.J.
Jan. 23.

ESDAILE *v.* PAYNE.

Practice—Extension of Time for Appealing—Special Circumstances—Reversal of Judgment by House of Lords—Appeal by some Defendants, but not by Applicant.

On December 13, 1888, the Court of Appeal (consisting of COTTON, L.J., and BOWEN, L.J.) granted an extension of time for appealing to Lane and Neave upon the terms and under the circumstances stated in L. J. N. C. 1888, p. 158. Immediately after this order was made, Hill, another defendant, who had not appealed from the decision of KAY, J., gave notice of an application for extension of time for appealing from that decision. The plaintiff then applied to the Court that the application of Lane and Neave might be reheard, on the ground that there were some material facts which had not been brought before the Court. The order of December 13 had not been passed and entered. The Court gave leave for the rehearing of the application.

The applications of Lane and Neave and Hill were now heard together. The further facts brought before the Court were that after the time for appealing from the judgment of Kay, J., had expired, the Metropolitan Railway Company had purchased the reversion of the property of which Lane and Neave were tenants with other property, and they had also purchased from the plaintiff the tithe-rent or rate to which the property was subject. It further appeared that a private Act of Parliament had been passed in 1881 which substituted for the tithes arising from the parish an annual rate of 6,000*l.* to be levied by the churchwardens and overseers, and to be paid by them to the tithe-owner. Difficulties arose in collecting this rate, and in 1888 a further private Act was passed which provided that for twenty-one years from March 25, 1888, the tithe-owner should accept the sum of 5,000*l.* a year, on being punctually paid, in satisfaction of the sum payable

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under the Act of 1881, and the tithe-owner was himself empowered to levy a rate.

John Henderson for Hill.

Ashton Cross for Lane and Neave.

F. W. Maclean, Q.C., and *Howard* for the plaintiff.

Their LORDSHIPS said that when Lane's and Neave's application was granted the facts were not fully before the Court; that it was of great importance that there should be an end to litigation, and that that was the object of the Rules which impose a limit of time for appealing; that, having regard to the purchase of the property by the Metropolitan Railway Company and the alteration of the circumstances caused by the passing of the Act of 1888, which was a bargain made on the footing that all the defendants who had not appealed would be liable to the tithe, it would be wrong to give leave to extend the time for appealing; and both applications must be refused.

Court of Appeal.
LORD ESHER, M.R.
BOWEN, L.J.
FRY, L.J.
Jan. 25.

Ex parte WALKER. *In re* THE YORKSHIRE COUNTY COUNCIL ELECTION.

Jurisdiction—Appeal—Order for Exception from Illegal Practice at Election—Judicature Act, 1873 (36 & 37 *Vict. c.* 66), *s.* 47; *Municipal Corporations* (*Corrupt Practices*) *Act*, 1884 (47 & 48 *Vict. c.* 70), *ss.* 13, 20.

Appeal of Gerald Walker, a candidate for the office of county councillor under the Local Government Act, 1888 (51 & 52 Vict. c. 41), from the order of Lord Coleridge, C.J., and Hawkins, J., for refusing to allow under section 20 of the Municipal Corporations (Corrupt Practices) Act, 1884 (47 & 48 Vict. c. 70), as an exception from section 13 of that Act, an act which would otherwise be an illegal practice—namely, employing for the purpose of promoting the election of a candidate, and for payment, or promise of payment, a person in a capacity other than that of clerk, messenger, or polling agent.

Their LORDSHIPS held that an appeal lies from an order of the High Court on an application for an order for the exception from the provisions of the Municipal Elections (Corrupt Practices) Act, 1884, of an act which would otherwise be an illegal practice.

Appeal allowed.

Court of Appeal.
LORD ESHER, M.R.
BOWEN, L.J.
FRY, L.J.
Jan. 23, 29.

EDWARDS *v.* THE VESTRY OF ST. MARY, ISLINGTON.

Metropolis Management Act, 1862 (25 & 26 *Vict. c.* 102), *s.* 106—'*Anything done or intended to be done*'—*Watering Streets—Negligence—Notice of Action.*

Appeal from a judgment of GRANTHAM, J.

Action to recover damages for personal injuries. The plaintiff was a servant of Messrs. Irons & Co., who had a contract with the defendants for the supply of horses and drivers for the water-carts belonging to the defendants. The plaintiff was driving a water-cart in order to fill it with water, for the purpose of watering the streets, when the axle broke and the plaintiff was thrown to the ground and injured. The alleged cause of action was negligence on the part of the defendants by reason of their servants not keeping the cart in proper repair. No notice of action was given, and the jury found a verdict for the plaintiff for 100*l.*, but Grantham, J., gave judgment for the defendants upon the ground that one month's notice of action was necessary under 25 & 26 Vict. c. 102, s. 106.

E. J. Davis for the plaintiff.

J. V. Austin for the defendants.

Their LORDSHIPS dismissed the appeal, being of opinion that the act complained of being a thing done or intended to be done by the defendants under the powers conferred upon them by 19 & 20 Vict. c. 120, they were entitled to notice of action under 25 & 26 Vict. c. 102, s. 106.

HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
Jan. 22, 23, 24, 25.

FINCK *v.* THE LONDON AND SOUTH-WESTERN RAILWAY COMPANY.

Railway Company—Widening existing Line—Limits of Deviation—Extreme Boundary—'Medium filum'—Railways Clauses Act, 1845 (8 *Vict. c.* 20), *s.* 15.

This was an action by the plaintiff to recover possession of a piece of land alleged to have been wrongfully taken by the company for the purpose of widening their railway under the South-Western Railway (Various Powers) Act, 1883 (46 & 47 Vict. c. clxxxix), which incorporated the Railways Clauses Act, 1845, and for a declaration that certain notices to treat for the purchase of the piece of land were invalid, and also for a declaration of title and damages in respect of an alleged right of way obstructed by the company.

By their private Act (section 8), the company were authorised to make 'a widening of the company's railway on its western side between Paradise Street and the north-eastern side of Westminster Bridge Road.' This widening was made in part on the piece of land in question, beyond the limits of deviation marked on the deposited plans, but so that, if the measurement was made to the *medium filum* of the widening, it would be within those limits; and one question in the case was whether section 15 of the Railways Clauses Act, 1845—under which it has been decided that in measuring deviations under that section the *medium filum viæ* is to be taken as their commencement and termination—applied to the widening of an existing line.

Marten, Q.C., and *Alexander* for the plaintiff.

Ince, Q.C., and *Vaughan Hawkins* for the company.

KAY, J., said that section 15 only applied to a deviation of the original proposed line of railway within the limits there mentioned, and that he entirely dissented from the argument that that section and the cases decided under it had any application to the widening of an existing line of railway; and that, in the case of such a widening, the limits of deviation

shown in the plans marked the utmost boundary to which any part of the widened line—and not the *medium filum*—could be carried. The company, therefore, in carrying their widening beyond this limit had acted in excess of their powers; but it was equally clear that, unless the plaintiff had sustained special damage thereby, he could not maintain an action, but proceedings could only be taken by the Attorney-General. His lordship then examined the facts, and came to the conclusion that the land in question was land which the company was authorised to take, if necessary, for the purposes of their undertaking, and that it was necessary on other grounds for the company to take it; that proper notices to treat had been given, and that the plaintiff, therefore, suffered no special damage from the company having exceeded their powers in widening their line on the land so taken. On the other part of the case, his lordship made a declaration as to the plaintiff's right to a substituted way, and gave no costs of the action to either party.

Chancery Division. CHITTY, J. Jan. 18. } *In re* MARSDEN'S ESTATE. WITHINGTON *v.* NEUMANN.

Administration—Costs—Interest on Costs.

Where in an administration action an order has been made for taxation and payment of costs and for distribution of the balance of the estate amongst the persons beneficially entitled, interest upon costs in the absence of special direction is not payable.

Macaskie and *W. Warlters Horne* for the parties.

Chancery Division. CHITTY, J. Jan. 30. } *In re* REACH'S TRUSTS. SALTHOUSE *v.* REACH.

Taxation—Solicitor's Charges—Particulars of Sale—Solicitors' Remuneration Act, 1882—*General Order—Schedule* 2—*Discretion of Taxing-master—Schedule* 1, *part* 1.

Upon the construction of schedule 2 of the General Order made in pursuance of the Solicitors' Remuneration Act, 1882, 'particulars of sale' are included in the words 'other documents,' the charge for drawing which is therein fixed at 2*s.* per folio.

Schedule 2 is not to be read and construed strictly by the typography; and, having regard to the context and wording, the discretionary power given thereby to the taxing-master to increase or diminish 'the above charge' is not to be confined to 'attendances.' The deducing fee of 30*s.* per cent. on the amount of the purchase-money given by schedule 1, part 1, applies only to lots actually sold, and where one of the conditions of sale relates exclusively to an unsold lot a solicitor is entitled to additional remuneration for his skill and trouble in preparing the special conditions on the old system.

Romer, Q.C., Shebbeare, and *Bardswell* appeared for the parties.

Chancery Division. NORTH, J. Jan. 12. } *Re* THE WEST CUMBERLAND MINING COMPANY.

Company—Winding-up—Appointment of Provisional Liquidator—Extraordinary Resolution for Voluntary Winding-up—Commencement of Winding-up.

Petition.

This was a petition for the compulsory winding up of the above company. A provisional liquidator had been appointed immediately after the presentation of the petition. After the appointment of the provisional liquidator the company passed an extraordinary resolution to wind up voluntarily,

Napier Higgins, Q.C., Ingle Joyce, and *Page,* for the petition, asked for a compulsory order, or, if a supervision order were made, then that the voluntary winding-up should be deemed to have commenced at the date of the appointment of the provisional liquidator, and not at the date of the passing of the extraordinary resolution. They referred to *In re The Colonial Trusts Corporation*, L. R. 15 Chanc. Div. 465, and *In re The Emperor Life Assurance Society*, 55 Law J. Rep. Chanc. 8.

Cozens-Hardy, Q.C., Everitt, Q.C., J. G. Wood, Levett, and *W. H. Jackson* appeared for creditors and shareholders, and all asked for a supervision order.

NORTH, J., said he should make a supervision order, as such an order was, or ought to be, except under special circumstances, less expensive than a compulsory order. He did not think that he had any jurisdiction to direct that the voluntary winding-up should be deemed to have commenced at the date of the appointment of the provisional liquidator. It must be deemed to have commenced at the date of the passing of the extraordinary resolution.

Chancery Division. NORTH, J. Jan. 19. } *Ex parte* THE PERPETUAL CURATE OF BILSTON.

Lands Clauses Consolidation Act, 1845—*Investments of Funds paid into Court under the Lands Clauses Act*, 1845, *and a Private Act—Costs.*

Petition.

This was a petition by the perpetual curate of Bilston for the investment in the purchase of freehold land and houses in Birmingham of two sums of 4,414*l.* 7*s.* 7*d.* Consols and 500*l.* Consols in Court belonging to the endowment of his living. The sum of 4,414*l.* 7*s.* 7*d.* Consols represented moneys paid into Court under a private Act of 42 Geo. III., which authorised the leasing of certain mines under the glebe lands of Bilston, and directed the moneys received from the lessees to be invested in the purchase of other lands to be held as glebe land. The sum of 500*l.* Consols represented moneys paid into Court by a railway company as the purchase-money of land taken by them. The property proposed to be taken was the subject-matter of two separate contracts which had been entered into by the perpetual curate of Bilston, the one for the purchase of certain lands for the price of 2,500*l.*, and the other for the purchase of lands at the price of 2,275*l.* The ques-

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tion was now raised what proportion of the costs ought to be borne by the railway company.

Cozens-Hardy, Q.C., and *Hood* for the petition.

Medd, for the railway company, referred to *Ex parte The Bishop of London*, 2 De G. F. & Jo. 14.

NORTH, J., held that the costs must be apportioned, and that on the principle of *Ex parte The Bishop of London* the company must pay half of the costs; but that, as the fund paid in by the company was under 1,000*l.*, they ought not to pay more costs than would have been incurred on a summons. The company must also pay a rateable proportion of the *ad valorem* stamp according to the proportion which the railway fund bears to the other purchase-money, and one-fourth of the other costs of reinvestment under both contracts.

Chancery Division. NORTH, J. Jan. 28. } CATE *v.* THE DEVON AND EXETER CONSTITUTIONAL NEWSPAPER COMPANY (LIM.).

Copyright in Periodical — Registration — Unregistered Version of Registered Periodical—5 & 6 Vict. c. 45, ss. 18, 24.

This was an action by the registered proprietors of a trade publication, called 'The Commercial Compendium,' to restrain the defendants from publishing in the *Devon and Exeter Daily Gazette* certain lists of deeds of arrangement extracted by persons employed and paid by the plaintiff from the Queen's Bench offices. The plaintiff was in the habit of supplying a certain number of copies of this publication to a trade society, which distributed them among its subscribers, but the copies so supplied had a different title and outside sheet, though internally they were identical with the 'Commercial Compendium.' The 'Compendium' was registered under 5 & 6 Vict. c. 45, s. 18, but there was no separate registration of the differently entitled version supplied to the society, from which, as it turned out, and not from the 'Commercial Compendium' itself, the defendants had copied.

Motion treated as trial.

Cozens-Hardy, Q.C., and *M'Kenna* for the plaintiffs.

Higgins, Q.C., and *Stock* for the defendants.

NORTH, J., held that the defendants had infringed the plaintiffs' copyright, and that an injunction must be granted, and that the manner in which the plaintiff had dealt with his paper afforded them no defence.

Chancery Division. KEKEWICH, J. Jan. 26. } *Re* REES. REES *v.* REES.

Legacy—Retainer against Debtor Legatee—Legatee an Undischarged Bankrupt — Legacy Accruing within Three Years of Close of Liquidation—Bankruptcy Act, 1869, ss. 15 (3), 54 (1)—Practice—Originating Summons—Removal of Proceedings to London from District Registry—Transfer.

Under the will of a testator who died January 22, 1888, W. Jones became entitled to a legacy of 1,000*l.* On May 11, 1883, the legatee had presented his petition for liquidation of his affairs, which had proceeded in the usual course until December 4, 1886, when the liquidation was closed, and the trustee released; but no dividend was ever paid, and the bankrupt had never obtained his discharge. He was debtor to the extent of 660*l.* to the testator, who had proved in the liquidation for the debt in May, 1883. The official solicitor made no claim in respect of the legacy; but the residuary legatees under the testator's will claimed that the executors must retain the amount of the debt out of the legacy, on the ground that the debt owing to the testator must be taken as having been paid out of part of the legacy.

The proceedings were instituted in the district registry by originating summons.

Warmington, Q.C., and *Hughes* for the executors.

P. Wheeler for the residuary legatees.

Alexander, Eve, Ellis Davis, and *Baines* for various persons claiming to be incumbrancers upon the legacy.

KEKEWICH, J., held that as, having regard to the Bankruptcy Act, 1869, s. 54 (1), which governed this case, the testator himself could not have enforced his claim against the legatee by way of set-off until the expiration of the three years from the close of the bankruptcy, his executors, being in no better position, could not retain the legacy or any part of it, accruing as it did before the expiration of the three years.

Inquiries were directed with respect to the incumbrances; and, on behalf of some claimants, an application was made that the proceedings might be removed from the district registry to London.

KEKEWICH, J., said that as no chambers are attached to his Court no removal could be ordered of an originating summons unless preceded or followed by a transfer to some other judge of the Chancery Division having chambers; and he, therefore, directed that the application should stand over until an application should have been made to the Lord Chancellor for such transfer of the proceedings.

Chancery Division. KEKEWICH, J. Jan. 28. } WILLIAMS *v.* ALLEN.

Practice — Costs — Discretion of the Court — Issues of Fact—Action founded on Tort—County Courts Act, 1867, ss. 5, 12 — County Courts Act, 1888, Order LXV., rule 1.

This action was brought to restrain a trespass on the part of the defendant. On September 7, 1887, an order by consent was made 'that notwithstanding that the subject-matter of the action or the amount or value thereof might not be within the jurisdiction of County Courts,' certain issues of fact in the action be tried in the County Court of Lambeth, the parties submitting to be bound by the finding of the County Court, notwithstanding the want of jurisdiction, if any, in such Court. The County Court judge, however, refused to try the issues, and on December 3, 1887, they were ordered to be tried in the High Court, and they were, accordingly, now tried before his lordship, whose finding was in favour of the plaintiff. The subject-matter in dispute was a small portion of a garden plot, the

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entire value of which was under 20*l.*, but the discussion on the issues involved the dealing with a complicated series of facts and an argument upon a point under the Statute of Limitations. On the plaintiff's motion for judgment upon the result of the trial of the issues, the defendant contended that, in the exercise of his discretion, his lordship should not award costs beyond such costs as the plaintiff would have recovered if the action had been instituted and tried in the County Court.

Warmington, Q.C., and *G. Whitaker* for the plaintiff.

Neville, Q.C., and *Bramwell Davis* for the defendant.

KEKEWICH, J., held that, although in his judgment the case was one which, having regard to the County Court Acts, 1867 and 1888, might have been brought in the County Court, yet the Court clearly had a discretion in such a matter. Here questions of importance had arisen, and very properly been argued; and therefore, in the exercise of the discretion conferred by Order LXV., rule 1, he should hold that the action was properly disposed of in the High Court, and the plaintiff would have his costs accordingly.

Queen's Bench Division. Jan. 22. } REGINA *v.* SCOTT AND OTHERS, JUSTICES FOR SOUTH SHIELDS.

Intoxicating Liquor Licenses—Application for Outdoor Spirit License — Justices — Discretion to Refuse, Limited or Unlimited—'Mandamus'—Wine and Beerhouse Act, 1869 (32 *&* 33 *Vict. c.* 27), *s.* 8—*Beer Dealers Retail Licenses Act*, 1880 (43 *Vict. c.* 6), *s.* 1.

This was an application for a rule for a *mandamus* to justices to hear an application for a grant of a certificate for an outdoor spirit license. The applicant made an application to the respondent justices for an outdoor spirit license under section 69 of 35 & 36 Vict. c. 94, which they refused on neither of the grounds required by section 8 of 32 & 33 Vict. c. 27, which provides that no application under that Act in respect of a license to sell by retail beer, cider, or wine, not to be consumed on the premises, should be refused, except upon one or more of the grounds therein contained. The justices contended that their discretion in the matter of the refusal of such licenses was unfettered, as section 8 of 32 & 33 Vict. c. 27, had been repealed by section 1 of 43 Vict. c. 6, which enacts that 'section 8 of the Wine and Beerhouse Act, 1869, is hereby repealed, as far as the qualification therein contained relates to grants of certificates for such additional licenses as aforesaid; and the licensing justices shall be at liberty either to refuse such certificates as aforesaid on any grounds appearing to them in the exercise of their discretion sufficient.'

The applicant moved for a rule *nisi* for a *mandamus* to the justices to hear an application for the grant of such outdoor spirit license.

James Paterson for the applicant.

The COURT (HUDDLESTON, B., and WILLS, J.) held that the rule ought to be made absolute on the ground that the repeal of section 8 of 32 & 33 Vict. c. 27, was partial, and that the discretion of the justices was unlimited only in respect of the grant of additional off-beer licenses, and not in respect of the grant of off-spirit licenses, which could only be refused on one or more of the grounds stated in 32 & 33 Vict. c. 27, s. 8.

Queen's Bench Division. (*Magistrates' Case.*) Jan. 22. } REGINA (ON THE PROSECUTION OF BELLHOUSE) *v.* LEIGHTON.

Case stated by justices of the County of Chester.

The defendant was charged at petty sessions with unlawfully suffering his dog to be at large, not securely muzzled and not under control, in contravention of an order made by the executive committee of the local authority for the county under the 'Rabies Order of 1887,' and, being convicted, applied to the justices to state a case.

The question for the opinion of the Court was, whether the 'Rabies Order of 1887,' made by the Privy Council in pursuance of statutory powers, was in excess of the powers so conferred.

H. F. Blair, for the defendant (the appellant), contended that 'disease,' in the Contagious Diseases (Animals) Act, 1878 (41 & 42 Vict. c. 74), s. 32, subs. xxxiii. applied, was confined to disease *ejusdem generis* with the diseases before mentioned in the Act—*i.e.* contagious and infectious diseases—and did not apply to rabies.

Henn Collins, Q.C. (with him *Marshall*), for the prosecution.

The COURT (LORD COLERIDGE, C.J., and HAWKINS, J.) held that the rule of construction limiting general words to matters *ejusdem generis* with those preceding must be applied so as to subserve the general intention of the Act, and that the definition of animals having been extended by the Contagious Diseases (Animals) Act, 1888 (49 & 50 Vict. c. 32), s. 8, to 'any kind of fourfooted beasts,' and horses, asses, and mules and their diseases having been added to the animals and diseases set out in the definition clause, the Privy Council had power under the Act to make an order with respect to rabies in dogs. *Appeal dismissed.*

Queen's Bench Division. (*Magistrates' Case.*) Jan. 23. } *Ex parte* AUTHERS.

Beerhouse Keeper—Selling Beer without License—Second Offence—Statutes 4 *&* 5 *Wm. IV. c.* 85, *s.* 17; 35 *&* 36 *Vict. c.* 94, *s.* 3, *subs.* 2.

This was an application for a writ of *habeas corpus* to discharge a prisoner from custody under the following circumstances: It appeared that in March, 1887, the applicant had been convicted and fined 20*l.*, under section 17 of 3 & 4 Wm. IV., which enacts that 'every person not being duly licensed to sell beer, cider, and perry as the keeper of a common inn, alehouse, or victualling house, who shall sell any beer, cider, or perry by retail to be drunk or consumed in or upon the house or premises where sold without having an excise retail license in force authorising him so to do, whether such person

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shall or shall not be licensed to sell beer to be drunk or consumed off the premises where sold, shall forfeit 20*l.*' In November, 1888, the applicant was convicted under section 3 of the Licensing Act, 1872, for selling beer without a license. Under that section a penalty not exceeding 50*l.* or one month's imprisonment is imposed for the first offence, and a penalty not exceeding 100*l.* or three months' imprisonment for the second offence. The magistrate treated the conviction as a second offence, and fined the applicant 100*l.*, and in default of payment the applicant was sent to prison for three months.

Abel Thomas, for the applicant, contended that the magistrate had no power to treat the offence committed in November, 1888, as a second conviction under the Act of 1872, inasmuch as the former conviction was under an entirely different statute.

Poland, Q.C., and *Forrest Fulton* appeared for the prosecution.

Cur. adv. vult.

The COURT (LORD COLERIDGE, C.J., and HAWKINS, J.) held that the applicant was entitled to be discharged, inasmuch as the magistrate had only power to inflict a fine of 100*l.* where there had been a second conviction under the Act of 1872.

Queen's Bench Division. Jan. 23. } JONES *v.* JONES.

Practice—Discovery—Action for Treble Damages—Penalty—2 Wm. & M. c. 5, s. 4.

Appeal from chambers.

This was an application on the part of the plaintiff for discovery of documents by the defendant in an action for treble damages for pound breach under the statute 2 Wm. & M. c. 5, s. 4.

Malcolm Douglas for the defendant.

Morris Lloyd for the plaintiff.

The COURT (LORD COLERIDGE, C.J., and HAWKINS, J.) held that the action was in effect an action for penalties, and that the plaintiff was not entitled to discovery from the defendant.

Queen's Bench Division. Jan. 24. } CROWE *v.* PRICE.

Practice—Execution—Appointment of Receiver—Pension of Retired Officer of Her Majesty's Forces—Commutation Moneys—Army Act, 1881 (44 & 45 *Vict. c.* 58, *s.* 141—*Pensions Commutation Act*, 1871 (34 & 35 *Vict. c.* 36).

Motion that the plaintiff in the action should be appointed receiver of all moneys standing to the credit of the estate of the defendant at the bankruptcy estates account at the Bank of England.

The action was brought on June 20, 1888, to recover an amount due to the plaintiff upon the defendant's dishonoured acceptances, and the plaintiff signed judgment under Order XIV.

The defendant was a retired deputy commissary-general, who was adjudicated a bankrupt in 1885 and an order made for the payment of a monthly sum out of his pension to his trustee. In April, 1888, an arrangement, by which he commuted a part of his pension and his creditors accepted a composition, was carried out under the order of the Court. When all claims had been satisfied there remained in the hands of the trustee, according to his final account, a balance of 225*l.* 17*s.* 9*d.* due to the defendant, consisting of 109*l.* 5*s.* 11*d.* (part of his pension money paid to the trustee under the aforesaid order) and 116*l.* 17*s.* 9*d.* (part of the commutation money).

The plaintiff having applied that he should be appointed receiver of the whole amount, the application was referred by DENMAN, J., to the Court.

Whateley for the plaintiff.

Sidney Wolff, for the defendant, contended that a receiver could not be appointed in respect of an officer's pension money (*Lucas* v. *Harris*, 56 Law J. Rep. Q. B. 15); and that the commutation money, being capitalised pension, stood on the same footing.

The COURT (LORD COLERIDGE, C.J., and HAWKINS, J.) held that while no receiver could be appointed in respect of the pension money, the rules applying to pensions did not apply to commutation money, which could be dealt with either by appointing a receiver or restraining the defendant from receiving it.

Queen's Bench Division. Jan. 28. } COHEN *v.* BARNE.

Practice—Attachment of Debts—Garnishee Order 'nisi'—Sufficiency of Affidavit—Rules of the Supreme Court, 1883, *Order XLV., rule* 1.

Appeal from chambers.

Ex parte application for garnishee order *nisi*.

The solicitor for the judgment creditor in the affidavit sworn in support of an application under the Rules of the Supreme Court, Order XLV., rule 1, deposed that, as he had been informed and verily believed, one J. S. was indebted to the judgment debtor in an amount less than the judgment debt, but exceeding 100*l.*

Whitehouse, for the judgment creditor, contended that, as the judgment creditor, and *à fortiori* his solicitor, could as a rule only give evidence as to such a debt being due on information obtained from either the judgment debtor or the garnishee, an affidavit of information and belief was sufficient.

The COURT (DENMAN, J., and STEPHEN, J.) granted the application.

Probate, Divorce, and Admiralty Division. Jan. 15. } IN THE GOODS OF JOHN EDMEADES COLYER, DECEASED.

Will—No Proper Attestation Clauses—Document Executed as a Deed.

The testator executed his will thus: 'Signed, sealed, and delivered by the aforesaid John Edmeades Colyer, in the presence of John Edmeads Colyer; G. W. Hunt,

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Clerk in Holy Orders, Curate of Astbury; Charles P. Percival, Schoolmaster, Astbury.'

The document was sealed and appeared to have been executed as a deed.

Neither of the attesting witnesses remembered having witnessed any document purporting to be a will for the testator, but the witness Hunt remembered attesting one paper of some sort, and the witness Percival remembered attesting several papers, but without any knowledge of their contents. Neither witness remembered attesting any document in the presence of the other. The deceased left a widow and eight children.

Bayford, Q.C., moved for probate of the will with consent of all parties interested, with the exception of two of the testator's children not yet of age.

BUTT, J., admitted the will to probate.

Probate, Divorce, and Admiralty Division. Jan. 16, 17, 18, 19. } RIDING *v.* HAWKINS.

Will—Undue Influence—Fraud—Pleading.

Sir Edward Clarke (*Solicitor-General*), *Inderwick, Q.C.*, and *R. Pritchard* for the plaintiff.

Bayford, Q.C., and *Bargrave Deane* for the defendant.

Evidence of a misrepresentation by a legatee as to his means, whereby a deceased person has been persuaded to leave him a substantial amount instead of a legacy of 100*l.*, believing him to be very poor, cannot be given under a plea of undue influence.

Therefore, in a case where undue influence only was pleaded, the COURT (BUTT, J.) allowed the pleading to be amended by adding a plea of fraud in order that evidence of such misrepresentation might be given.

Probate, Divorce, and Admiralty Division. Butt, J. Jan. 20. } IN THE GOODS OF ANDREW PAXTON, DOROTHY ISABELLA BENNISON, AND HENRY BENNISON, DECEASED.

Administration—Fund in Chancery—Administration Bond—Dispensing with Sureties.

A fund being in the Court of Chancery to which several parties were entitled, and difficulties existing in obtaining security by a proposed administratrix to the estates of the above-named parties, the judge in the Chancery Division ordered each party entitled to receive the share himself, the proposed administratrix taking one share.

Middleton, for the administratrix, Elizabeth Bennison, moved to dispense with sureties.

BUTT, J.: The President has, in recent cases, expressed his disinclination to do without sureties, and even if I did not agree with that doctrine I should follow it; but I entirely agree with it. The registrar must go through the schedule and see if it agrees with the facts as stated in the affidavit.

The registrar having gone through the schedule,

BUTT, J., ordered that no security be required in the estate of Andrew Paxton and Dorothy Isabella Bennison, and that the said Elizabeth Bennison be at liberty to swear the value of the estate of Henry Bennison at 600*l.* and give security for double that amount.

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In re W. B. LITTLE. HARRISON *v.* HARRISON.

Married Woman—Restraint on Anticipation—Power of Court to Bind her Interest—Release of Power of Appointment among Children—Conveyancing Act, 1881, *s.* 39.

Appeal from decision of KAY, J., refusing an application by Mrs. Harrison, a married woman, under section 39 of the Conveyancing Act, 1881, to remove a restraint on anticipation imposed by her father's will upon her life interest in a fund bequeathed by such will.

By the will a sum of Consols was (among other property) given to the appellant for life for her separate use without power of anticipation, with remainder as she should appoint among her children or other issue, and in default of appointment to her children who should attain twenty-one in equal shares.

By an order made on February 22, 1887, the Court of Appeal authorised the release of the restraint on anticipation to enable her to raise a sum of 300*l.* by mortgage of her life interest and of a policy of insurance, and gave her liberty to charge her life interest with the 300*l.* and interest and the premium. She was now fifty-one years of age and had five children, the eldest of whom, a son, had attained twenty-one, and she had, since he attained that age, executed a deed whereby she released her power of appointment. The son was willing to surrender to his mother his vested reversionary one-fifth share of the Consols. The object was to sell this one-fifth, and thereby pay off the mortgage, the effect of which would have been to increase the annual income by about 15*l.*

KAY, J., considered that the release, having been executed to enable the donee of the power to obtain part of the fund subject to the power, operated as 'in fraud' of the power, and that the Court ought not to assist any such proceeding, and refused the application.

Cozens-Hardy, Q.C., and *J. G. Butcher* for the appellant.

Their LORDSHIPS held (affirming KAY, J.) that the power conferred by section 39 of the Conveyancing Act, 1881, was a discretionary power, and that being a power to alter and modify the disposition of the settlor it ought to be exercised only under very special circumstances. Assuming that the release could not be impeached, yet, its object being to enable the donee of the power to obtain part of the fund, the Court ought not by exercising its discretionary power to assist in carrying out a transaction which, if it had been effected by any appointment directly to the son, would have been clearly bad.

Appeal dismissed.

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BRAY (SURVEYOR OF TAXES) *v.* THE JUSTICES OF THE COUNTY OF LANCASTER.

Revenue—Income-tax—County Lunatic Asylum—Justices—Medical Officer's Apartments—5 & 6 Vict. c. 35, s. 61, No. VI.—16 & 17 Vict. c. 34, Schedule A.

Appeal from a Divisional Court (reported 57 Law J. Rep. M. C. 57).

Gainsford Bruce, Q.C., and *Smyly* for the justices.

The Solicitor-General and *A. V. Dicey* for the Crown.

Their LORDSHIPS dismissed the appeal.

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CURTIS *v.* STOVIN.

Jurisdiction—Action in High Court—Trial in County Court—Claims in Contract not exceeding 100*l.—County Court Act*, 1888 (51 & 52 *Vict. c.* 43), *ss.* 56, 65.

Appeal from an order of LORD COLERIDGE, C.J., and HAWKINS, J., formally made on January 31, for the

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Court of Appeal to settle the course of practice and affirming an order of MATHEW, J., at chambers, dated January 24, that the action be tried in the County Court of Nottinghamshire holden at Newark. The action was for 70*l.* for goods sold and delivered. The writ was dated July 24, 1888, and the summons on which the order was made, January 9, 1889.

Hextall and *Stanger* for the plaintiff.

Bucknill, Q.C., and *H. Stephen* for the defendant.

Their LORDSHIPS held that where an action of contract, in which the claim indorsed on the writ does not exceed, or is reduced by payment admitted set-off, or otherwise, to 100*l.*, is brought in the High Court, and the whole or part of the claim is contested, the jurisdiction to order it under section 65 of the County Court Act, 1888, to be tried in any Court in which the action might have been commenced, or in any Court convenient thereto, applies to all actions so brought, so limited to 100*l.*, and so contested, and not only to actions which might have been commenced in a County Court.

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Administration Action—Mortgage—Sale by Mortgagees out of Court—Auctioneer's Commission—Court Scale.

Appeal from a decision of KAY, J., noted L. J. N. C. 1888, p. 119.

Renshaw, Q.C., and *B. B. Rogers* for the appellants.

Ince, Q.C., and *Alexander* for the respondents.

Begg for the executrix.

Daniel Jones for the plaintiffs.

Their LORDSHIPS held that, although the sale had not been in all respects a formal sale under the control of the Court, yet under the special circumstances of the case the sale had taken place to some extent under the control of the chief clerk, who had fixed the reserve prices; and therefore, without deciding any principle, they affirmed the decision of Kay, J., in this case, which was a very peculiar one, and the facts were not likely to occur again.

Decision of KAY, J., *affirmed.*

Court of Appeal.
LORD ESHER, M.R.
FRY, L.J.
Jan. 11. Feb. 4.

STUMM *v.* DIXON AND KNIGHT.

Costs—Joint Defendants—Severance of Defence—Costs on Issues raised by one Defendant.

Appeal from a refusal of LORD COLERIDGE, C.J., and MANISTY, J., of a motion to review a taxation of costs referred to the Divisional Court by the judge at chambers.

Le Riche for the plaintiff.

J. G. Witt for the defendant.

LORD ESHER, M.R. (FRY, L.J. *dissentiente*), held, affirming the Queen's Bench Division, that, where the plaintiff obtains judgment at the trial against two or more defendants sued jointly, but some severing in their defence, all the defendants are liable for all the costs of the action and trial, except those costs caused by so much of the separate defence of any defendant as is only a defence for that defendant, for which the severing defendant is solely responsible.

LORD ESHER, M.R., stated the true rule to be in his opinion as follows: The true rule in my opinion is this. Where an action is tried against two or more defendants, and any defendant separates in his defence, and the judgment is against all, the law is that each of them is liable for the damages awarded by the judgment, and each of them is liable to the plaintiff for all costs taxed by him as properly incurred by him in the maintenance of his action except as to costs caused to him by so much of the separate defence of any defendant as is and can only be a defence for that defendant as distinguished from the other defendants. With regard to such costs so caused to the plaintiff, he is entitled by law to recover such costs against that defendant alone who has so caused him to incur them. In such case the taxation before the master should be one taxation with all the parties present, there would be only one allocatur, but the master, on being satisfied that a part of the costs come within the rule above enunciated, should mark them in the margin and on the *postea* accordingly. Then the plaintiff would be entitled to issue execution against either defendant for all costs not so marked, but against the one defendant only who had caused to the plaintiff the costs so marked in the margin.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
LOPES, L.J.
Feb. 2, 4.

In re WILLIAMS.
FOULKES *v.* WILLIAMS.

Special Power—Execution—Will not referring to Power—Wills Act (1 *Vict. c.* 26), *ss.* 24, 27.

Appeal from KAY, J.

Mrs. Esther Williams, by her will dated in 1878, devised freehold premises to trustees in trust for her son, William Robert Williams, for life, and after his decease upon trust for sale and to invest the proceeds and to hold the same, together with a moiety of her residuary estate, upon trust (if the said William Robert Williams should by his will direct, but not otherwise) to pay the income of the same to any wife of the said William Robert Williams for her life or any less term, and in default of and subject to such appointment upon trust as therein mentioned. The testatrix died on July 15, 1887.

Robert William Williams, by his will dated August 8, 1887, devised and bequeathed all his real and personal estate to his wife absolutely, no reference being made to the power of appointment. The testator died on the following day. He had no real estate of his own, except what he took under the will of his mother, either at the date of his will or at the date of his death.

An originating summons was taken out by the trustees of the will of Esther Williams to determine whether the general devise and bequest in the will of William Robert Williams in favour of his wife operated as a valid exercise of the power of appointment.

KAY, J., held that the power had not been validly exercised.

The wife appealed.

Bardswell for the appellant.

Russell Roberts for the trustees and for a party entitled in default of appointment.

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Their LORDSHIPS held that the case was governed by *In re Mills; Mills* v. *Mills*, 56 Law J. Rep. Chanc. 118; L. R. 34 Chanc. Div. 190, and dismissed the appeal.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
LOPES, L.J.
Feb. 6.

THE TRADE AUXILIARY COMPANY AND OTHERS *v.* THE MIDDLESBROUGH, &C. TRADESMEN'S PROTECTION ASSOCIATION.

Copyright—Periodical—Joint Employer—Joint Right of Action—Copyright Act, 1842 (5 & 6 *Vict. c.* 45), *ss.* 18, 19.

Appeal from decision of CHITTY, J., noted *ante*, p. 6.

Maidlow for the appellants.

Romer, Q.C., and *R. M'Kenna*, for the respondents, were not called upon.

Their LORDSHIPS dismissed the appeal, with costs.

HIGH COURT OF JUSTICE.

Chancery Division.
NORTH, J.
Jan. 28.

Re THE LONDON AND METROPOLITAN COUNTIES BENEFIT, BUILDING, AND INVESTMENT SOCIETY.

Building Society—Winding-up—Jurisdiction—Petition by Member—Companies Act, 1862, *s.* 199—10 *Geo. IV. c.* 56, *s.* 26.

Petition.

This was a petition by an unadvanced member of the society for a compulsory winding-up order on the ground that it was commercially insolvent and that it was just and equitable that it should be wound up.

No. 26 of the society's rules provided that 'no dissolution of the society shall take place unless its affairs be deranged, or its principles prove inadequate to promote its objects, or its funds be insufficient to meet the claims upon them, or from any other such cause, rendering the dissolution absolutely necessary, and then only in pursuance of the provisions of the Act 10 Geo. IV. c. 56, s. 26.'

The society had not been registered under the Building Societies Act of 1874. The petitioner was the holder of eight shares of 100*l.* each, in respect of which he had already paid 535*l.* He had not given notice of withdrawal. From the report of a committee that had been appointed, it appeared that the liabilities (including the return of the subscriptions of members) amounted to 11,630*l.*, and that the assets were deficient to the extent of 4,540*l.* The petition was not supported by any shareholder or creditor, and, before the hearing of the petition, a meeting had been held of depositors and members, at which an opinion was expressed that it would be contrary to the interest of the depositors and disastrous to the members that the society should be wound up.

Everitt, Q.C., and *Hadley* for the petition.

Giffard, Q.C., and *Jason Smith* for the society.

NORTH, J., dismissed the petition. He said that the petitioner held only a small proportion of the shares, and he was not supported by anyone. The jurisdiction to wind up was given by section 199 of the Companies Act, 1862, and the question was whether it was 'just and equitable' that the company should be wound up. Under the circumstances, he thought that a single shareholder had no right, contrary to the wishes of all the other shareholders, to force on the society the expense of a winding-up.

Chancery Division.
STIRLING, J.
Jan. 16.

In re THOMPSON.
BEDFORD *v.* TEALE.

Charitable Bequest—Impure Personalty—Corporation Bonds—9 Geo. II. c. 36.

J. R. Thompson, by his will dated in 1887, bequeathed various sums of money to charitable objects, with a direction that such legacies should be paid exclusively out of such part of his personal estate as might be legally bequeathed for charitable purposes. Part of his estate consisted of money invested upon bonds issued by various corporations. An originating summons was taken out by the trustees of the will to determine the question whether the charitable legacies were to any and what extent void by reason of the personal estate of the testator consisting in part of corporation bonds or any other personal estate connected with land within the meaning of the Mortmain Act.

The first class of bonds were those issued by the Corporation of Batley by virtue of certain Acts of Parliament, and giving the holder a charge upon the works authorised by the said Acts, and upon the rents, profits, and other moneys arising by virtue of the said Acts from the public water-rates and borough fund. Part of the borough property consisted of rent-charges, the consideration received for the sale of surplus lands.

The next class of bonds were those issued by the Bradford Corporation. One of these was for 1,000*l.*, and purported to be issued by virtue (*inter alia*) of the Bradford Corporation Act, 1866, and gave a charge upon the general district rates. By section 69 of that Act it was provided that moneys borrowed under the Act should be 'charged upon the lands and property from time to time acquired by the corporation.' There was another bond issued by the Bradford Corporation by virtue of the Bradford Improvement Act, 1850, and in exercise of all other powers vested in the corporation and giving a charge (*inter alia*) upon the borough fund, but it did not appear from the evidence under what Act or authority the corporation had power to charge the borough fund.

Another bond was one issued by the Keighley Corporation by virtue of the Public Health Act, 1875, and other Acts, and giving a charge upon the general district rates of the corporation.

Another bond, issued by the Leeds Corporation, gave a charge (*inter alia*) upon the borough fund and borough rates, and also upon the undertakings, works, and property of the Leeds Gas Light Company and the Leeds New Gas Company, which were vested in the corporation. Part of the borough property consisted of the rent derived from a reformatory school, which was let on lease by the corporation.

Similar questions had arisen in a recent case before North, J., in *Re Hatton; Robson* v. *Gibbs*, 4 *Times* Law Rep. 311.

F. H. Colt for the trustees of the will.

Charles Browne for the residuary legatees.

Graham Hastings, Q.C., and *Bardswell* for persons representing the charities.

STIRLING, J., held that the bonds issued by the Batley Corporation, the bond for 1,000*l.* issued by the Bradford Corporation, and the bond issued by the Leeds Corporation were impure personalty, and could not be applied in payment of the charitable legacies; that the bond issued by the Keighley Corporation might be so applied; and with regard to the other bond issued by the Bradford

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Corporation his lordship directed the case to stand over for further evidence as to the authority to charge the borough fund.

Bankruptcy. Jan. 30. } *In re* TANNENBERG. *Ex parte* PERRIER.

Act of Bankruptcy—Deed of Assignment—Assent of Creditor—Misstatements by Debtor.

Appeal from the registrar of the County Court at Leeds dismissing a bankruptcy petition.

The petitioning creditor, together with the other creditors of the debtor, had agreed to and signed a resolution that a deed of assignment of the debtor's property should be executed to a trustee for their benefit. This resolution was agreed to upon a statement of his affairs set forth by the debtor, from which it appeared that he would be able to pay his creditors 20*s.* in the pound. After the resolution the trustee appointed under a deed which was executed by the debtor investigated the books of the debtor, and discovered that the estate could not pay quite 10*s.* in the pound. The deed contained a provision, not mentioned in the resolution, that the solicitor to the debtor should be paid in priority to the other creditors. Thereupon a petition was presented, and the registrar dismissed it on the ground that the petitioning creditor had assented to the assignment and was estopped from relying on it as an act of bankruptcy.

Tindal Atkinson, Q.C., and *H. Reed* for the petitioning creditor.

Yate-Lee for the debtor.

CAVE, J., in allowing the appeal, said that the principle that a creditor could not rely upon an assignment by the debtor of his property as an act of bankruptcy, when such assignment had been brought about by the consent of the creditor, was subject to the condition that the statement of affairs put forth by the debtor to obtain the creditor's assent must be correct. In this case that statement had turned out to be grossly incorrect. The provision that the solicitor should be paid in priority to other creditors in such a case was not reasonable, and the petitioning creditor could not be held bound by his assent.

CHARLES, J., concurred.

Appeal allowed.

Queen's Bench Division. (*Magistrates' Case.*) Jan. 31. } HEWETT (APPELLANT) *v.* THOMPSON (RESPONDENT).

Elementary Education Act, 1876 (39 & 40 *Vict. c.* 79), *ss.* 11, 12—*Non-attendance of Child at School—Attendance Order on Parent—'Reasonable excuse' for Non-compliance.*

The respondent was summoned for neglecting, without reasonable excuse, to comply with an attendance order requiring him to cause his child to attend school.

It was proved that the respondent had used every endeavour (short of actually taking the child to school) to ensure its attendance, but that the child had played truant against his wish.

Application was made to the stipendiary magistrate before whom the respondent was summoned to send the child to an industrial school, under the powers of section 12 of the Elementary Education Act, 1876, by which it is enacted that 'where an attendance order is not complied with without any reasonable excuse within the meaning of this Act, a Court of summary jurisdiction may order as follows. . . . If the parent satisfies the Court that he has used all reasonable efforts, as aforesaid, the Court may order the child to be sent to a certified day industrial school. . . .'

The magistrate considered that the respondent had shown a reasonable excuse for not complying with the attendance order, and that there was no jurisdiction therefore to send the child to an industrial school.

The COURT (HUDDLESTON, B., and WILLS, J.) held that the reasonable excuse referred to must be one of those described in section 11—namely, (1) that there is not within two miles from the residence of such child any public elementary school which the child can attend; or (2) that the absence of the child from school has been caused by sickness or any unavoidable cause. The Court held, therefore, that the magistrate had jurisdiction, and remitted the case to him.

Appeal allowed.

Probate, Divorce, and Admiralty Division. Butt, J. Feb. 5. } IN THE GOODS OF RANSOM COLECOMBE BATTERBEE (DECEASED).

Will—Executor out of the Kingdom—Probate Act, 1857 (20 & 21 *Vict. c.* 77), *s.* 73—*Administration with the Will Annexed.*

Ransom Colecombe Batterbee (deceased), by his will appointed Frank Watson and Francis Bloxam, and others, executors, and his daughter, Bessie Batterbee, sole residuary legatee.

Watson is dead, and Bloxam is travelling in South America, and is not expected to return to this country for a long time.

The residuary legatee is a minor, her brother and next-of-kin has been in Australia for thirty years, and she has elected her aunt (Anna Brewer) as her guardian.

By section 73 of the Probate Act, 1857 (20 & 21 Vict. c. 77), the Court may appoint an administrator with the will annexed where (among other cases) 'the executor shall at the time of the death of such person' (*i.e.* the testator) 'be resident out of the United Kingdom of Great Britain and Ireland.'

Searle moved for a grant of administration with the will annexed to Anna Brewer.

BUTT, J., made the order as prayed for.

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Table of Cases.

COURT OF APPEAL.

Court of Appeal.
LORD ESHER, M.R.
FRY, L.J.
Feb. 6.
} KAY *v.* BRIGGS.

Practice—Appeal from County Court—Refusal of Divisional Court to grant Leave to Appeal—Judicature Act, 1873, ss. 19, 45.

Joseph Walton, on behalf of the plaintiff, applied *ex parte* for leave to appeal against the refusal of a Divisional Court to give leave to appeal to the Court of Appeal from a County Court judgment, upon the ground that such refusal was an order from which an appeal would lie to the Court of Appeal under section 19 of the Judicature Act, 1873.

Their LORDSHIPS refused the application, being of opinion, upon the authority of *In re Amstel*, 47 Law J. Rep. P., D., & A. 11, that the Court had no jurisdiction, under sections 19 and 45, to hear an appeal from the refusal of the Divisional Court to grant leave to appeal.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
LOPES, L.J.
Feb. 5, 6, 9.
} LEE *v.* THE NEUCHATEL ASPHALTE COMPANY.

Company—Directors—Payment of Dividends out of Capital—Wasting Property—Injunction.

Appeal from a judgment of STIRLING, J., dismissing the action brought by the plaintiff, on behalf of himself and all other the ordinary shareholders of the company, against the company and the directors to restrain the company from paying a dividend of 9*s.* per share to the preference shareholders out of what were alleged by the defendants to be the profits of the company for the year ending December 31, 1885.

One of the directors was appointed to represent the preference shareholders.

The case is reported at length in 57 Law J. Rep. Chanc. 622.

The company was incorporated in 1873, with a capital of 1,150,000*l.*, divided into 35,000 preference shares and 80,000 ordinary shares of 10*l.* each.

One of the objects of the company was to acquire, on the terms of an agreement of July 17, 1873, a concession granted by the Government of Neuchatel, and the exclusive right of getting bituminous rock from the Val de Travers, and also the sub-concessions from five other companies.

The consideration for the purchase consisted of fully paid preferred and ordinary shares in the company, and the whole of the shares of the company were allotted to the selling companies.

The articles of association provided that the net profits of the company should be applied in paying first a preference dividend of 7 per cent.; secondly, a like dividend on the ordinary shares; and the surplus rateably among both classes of shares; that no distribution of profit, except an interim dividend not exceeding 7 per cent. on the preferred and 4 per cent. on the ordinary shares, should be made without the consent of a general meeting, whose decision was to be final in case of any dispute as to net profits; and article 100 provided that the directors might, before recommending any dividend, set aside and invest out of the net profits of the com-

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pany such sum as they thought proper as a reserve fund to meet contingencies, or equalise dividends, or repair or maintain the works, but should not be bound to reserve moneys for the renewal or replacing of any lease, or of the company's interest in any property or concession.

The terms fixed by the original concession had been in 1878 extended, and the area of the mines increased and the terms of working rendered less onerous to the company. There was no probability that the asphalte would become exhausted during the extended period, and the Court held on the evidence that the assets of the company were larger and more valuable than when the company was incorporated.

The accounts for the year 1879 and subsequent years showed an excess of receipts over expenditure, and dividends were declared in that year and 1831, 1832, and 1883.

In 1884 no dividend was declared, although the accounts showed a profit of 39,359*l.*, but 1,000*l.* was written off in pursuance of a resolution of the directors to write off such sum yearly in respect of the sum paid for the renewal of the concession, and the balance was written off the cost in shares of the original concession and other assets taken over by the company on its formation.

The accounts for 1835 showed an excess of receipts over expenditure to the amount of 17,140*l.* 13*s.* 2*d.*, out of which, after setting aside the sum of 1,000*l.*, the above-mentioned dividend was recommended by the directors.

Rigby, Q.C., and *Upjohn*, for the plaintiff (the appellant), argued that the proposed payment was a payment of profits out of capital.

Sir H. Davey, Q.C., and *Beale, Q.C.*, for the company.

Robinson, Q.C., and *Methold* for the representative of the preference shareholders.

Their LORDSHIPS affirmed the decision of Stirling, J. There was no obligation on a company to make up the assets of the company so as to meet its share capital—*i.e.* the amount of the nominal capital divided into shares, when that share capital had, as here, been issued under a duly registered contract, such contract not being fraudulent or illusory; that the payment of the proposed dividend was not a return of capital; that though, having regard to the return of the property belonging to the company, every ton of stuff got from the mine was, in a certain sense, a portion of the capital sunk in obtaining the property, the division of profit arising from the sale of that stuff was not such a return of capital as was prohibited. If a company is formed to acquire or work property of a wasting nature—*e.g.* a mine, a quarry, or a patent—the capital expended in acquiring it may be regarded as sunk and gone; but if the company retains assets sufficient to pay its debts any excess of money obtained by working the property may be divided among the shareholders. There was nothing *ultrâ vires* in article 100, as had been argued. The Companies Act did not require lost capital to be made up. The proposition that it is *ultrâ vires* to pay dividends out of profits is apt to mislead, and must not be understood in such a way as to prohibit honest dealings; it does not mean that no dividend can be properly declared out of moneys accruing from the sale of property bought by capital, but that if the working expenses exceed the current gains profit cannot be divided.

Appeal dismissed.

HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
Jan. 19.

In re FLAMANK. WOOD *v.* COCK.

Husband and Wife—Wife's Separate Property—Gift by Wife to Husband—Evidence.

Adjourned summons.

The plaintiff, wife of T. F., in 1866 became entitled for her separate use to a sum of 407*l.*, part of a mortgage debt of 515*l.* T. F., on payment of the difference (108*l.*), obtained a transfer of the mortgage to himself, and in 1869 sold the mortgaged property, his wife and another joining, as executors of the will by which the 407*l.* was bequeathed, in the conveyance to the purchaser. The execution of the conveyance by Mrs. F. was procured by her husband, who received the money and applied it to his own use. There was some evidence that Mrs. F. objected to her husband receiving the money, though they lived in perfect amity and no proceedings were taken by her in her husband's lifetime. T. F. died in 1885, having left his wife a life interest in all his property. There was no issue of the marriage. Mrs. F., who was now dead, took out a summons claiming the fund, and after her death the proceedings were continued by her representatives.

Marten, Q.C., and *Dibdin* for the summons.

Geare for T. F.'s legal personal representatives.

KAY, J., held that the transfer of the mortgage did not amount to a gift to the husband by the wife. The wife had had no separate advice; her concurrence in a representative capacity had been obtained by the husband; and the receipt of the income by the husband during his life could only be treated as a gift of such income for the joint benefit of husband and wife.

Chancery Division.
KAY, J.
Feb. 1.

In re THE AUSTRALIAN WINE IMPORTERS (LIM.) AND MASON.

Trade-mark—Registration—'Calculated to deceive'—Patents, &c., Act, 1883, ss. 72, 73.

Adjourned summons.

This was a summons by the above-named company to direct the comptroller to proceed with the registration in connection with wines of a trade-mark consisting of a label with a medallion in the centre; on the medallion was the figure of a sheep suspended by a band, with the words 'Golden Fleece' inscribed on each side of it.

In 1881 a device of a sheep suspended in a similar manner, with the words 'Golden Fleece Rum,' was registered; and in 1882 a similar device, inscribed with 'Golden Fleece Whisky,' was also registered. Both these trade-marks were assigned to Mason, a wine and spirit merchant, upon whose opposition the comptroller declined to register.

Renshaw, Q.C., and *J. Cutler* for the summons.

Macrory, for Mason, was not called upon.

KAY, J., refused the application with costs, on the ground that anyone who liked 'Golden Fleece' whisky or rum would be led to believe that the wine which the applicant proposed to sell in connection with the words 'Golden Fleece' came from the same merchant as the rum and whisky; and the 'exclusive use' of the words 'Golden Fleece' by the applicant would be calculated to deceive. Having regard therefore, both to sections 72 and 73, the mark ought not to be registered.

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Chancery Division.
KAY, J.
Feb. 1.

In re BOOR. BOOR *v.* HOPKINS.

Local Board—New Road—Assessment of Owner—Completion of Work—Charge—Liability—Date of Commencement of Charge—Public Health Act, 1875, *ss.* 150, 257.

Adjourned summons.

By leases dated 1875 and 1877 the Ecclesiastical Commissioners demised to G. C. Boor two houses for long terms, the lessee covenanting to pay all rates, taxes, and assessments.

In 1882 G. C. Boor executed a deed of gift upon trust for himself for life, he paying all outgoings and performing the covenants in the leases, and after his death for his son L. J. Boor absolutely. In 1884 the rural board served a notice on G. C. Boor in respect of each house, under section 150 of the Public Health Act, 1875, requiring him to make up a private road on which the houses abutted. G. C. Boor did not comply with the notice, and in February, 1885, the board completed the work themselves. G. C. Boor died in June, 1885, having by his will given his residuary estate to trustees on trust for his widow for life, with remainder to his children.

On his father's death L. J. Boor entered into possession of the houses, and in September, 1886, was served with notices by the board assessing the expenses of making the road, and on February 21, 1887, he was served with notices demanding payment of the money by ten annual instalments.

L. J. Boor then took out this summons for the determination of the question whether the assessments should be paid out of his father's estate or by himself personally.

Levett for the summons.

S. Dickinson for the defendants, the executors.

Vernon R. Smith for the defendant, the widow.

KAY, J., held that the amounts assessed would have been 'outgoings,' and payable by G. C. Boor if the board had taken summary proceedings under section 257 of the Public Health Act against the father for their recovery. But as they had not done so, and the time specified for doing so in the Act had expired, the charge only commenced from the service of the notices demanding payment, and was payable by the son.

Chancery Division.
KAY, J.
Jan. 31.
Feb. 4, 5, 6.

MAINLAND *v.* UPJOHN.

Mortgage—Redemption—Commission—Collateral Advantage.

This was an action by second mortgagees for an account against the first mortgagee, and amongst other points the question was raised whether certain sums retained by the defendant with the consent of the mortgagor as commission or bonus ought to be allowed to the defendant, or whether he should only be allowed the sums which were actually paid over by him to the mortgagor.

The mortgagor was a builder, and the advances were made from time to time by the defendant on the security of mortgages of unfinished houses; and the defendant on the occasion of each advance, with the consent of the mortgagor, deducted the stipulated commission and handed over the balance only of the nominal advance to the mortgagor. There was no reference in the mortgage deed itself to any commission. The plaintiffs, the second mortgagees, contended that they were entitled to redeem on payment of the moneys actually paid over to the mortgagor. The defendant insisted that he was entitled to be paid the whole of the nominal advance.

Marten, Q.C., E. C. Willis, Q.C., and *Mac Swinney* for the plaintiffs.

Sir Horace Davey, Q.C., and *Upjohn* for the defendant.

Marten replied.

KAY, J., said that there was no case of unfairness, pressure, or undue influence, and that in accordance with the decision of Vice-Chancellor Kindersley in *Potter* v. *Edwards*, 26 Law J. Rep. Chanc. 468; 5 W. R. 407, the whole of the nominal amount of the advance must be allowed to the defendant in taking the accounts.

Chancery Division.
KAY, J.
Feb. 7.

In re MASSINGBERD'S SETTLEMENT.
In re CLARK'S SETTLEMENT.
CLARK *v.* TRELAWNY.

Trustee—Breach of Trust—Improper Investment—Sale of Trust Funds—Liability of Trustee to Replace Stock Sold.

Adjourned summons and action.

Trustees, having power to invest in real securities and to vary investments, in 1875 sold a sum of consols forming part of the trust funds, and invested the proceeds of sale on a contributory mortgage of real estate subject to jointure and portions. It was admitted that this mortgage was an improper investment. The tenant-for-life having since died, the money on mortgage was now being called in, and the whole of the principal was forthcoming, so that no loss would follow directly from the investment; but the remaindermen, who were now entitled to the capital, claimed that the trustees ought to replace the sum of consols sold in 1875, which at that time stood at a much lower value than their present value.

Renshaw, Q.C., and *Badcock* for the remaindermen.

Clare for the trustees.

J. Henderson for other parties.

KAY, J., said that there were two classes of cases—first, cases where trust funds came to trustees properly in the shape of cash, and they then invested them improperly, in which case they were liable, not for the amount they might have got from a proper investment, but only for the cash they had received and interest; and, secondly, cases where, under a power to vary investments, trust funds properly invested were sold by trustees for the purpose of making an improper investment, in which case the Court would not separate the two acts—the sale and the investment—so as to say that the trust funds ever properly came into the hands of the trustees in the shape of cash; but the sale being made for the purpose of making another investment, if that purpose was improper, then the sale was improper also, and the trustees were in this case liable either to replace the stock or to repay the proceeds of sale at the option of the *cestuis que trust*. That was the case here, and the trustees were therefore bound to replace the actual sum of consols, and must pay the costs of the action.

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Chancery Division.
CHITTY, J.
Jan. 26.
Re BAILY (DECEASED).

Practice—Administration—Judgment Creditor—Equitable Execution.

A testator, who was the sole proprietor of a magazine published under the name of Baily & Co., directed that the magazine should be carried on by his executors. An action for the administration of his estate having been instituted, A. H. Baily, one of the executors, and also a beneficiary, was appointed receiver and manager. Afterwards an order was made appointing A. H. Baily and one Woodthorpe joint receivers and managers. An action was instituted in the Queen's Bench Division against Baily & Co. for an alleged libel in the magazine during its management by A. H. Baily and Woodthorpe, but was compromised upon the terms that Baily & Co. should pay 200*l.*, and judgment was signed against Baily & Co. for that amount. The Court of Chancery had refused to sanction the compromise. A. H. Baily, however, had, as was alleged, assented to the compromise. A. H. Baily declined to pay the 200*l.*, as was alleged, on the ground that by doing so he might make himself personally responsible.

The plaintiff in the libel action now asked for equitable execution against the testator's estate.

Eldon Banks; Vaughan Williams, Q.C., and *Hansell*; *Maclean, Q.C.*, and *E. Ford* for the parties.

CHITTY, J., refused the application, on the ground that the applicant was a stranger to the action. The estate was not represented in the libel action. If there was any cause of action against the executors it was against them personally, and, if it had arisen in the due course of their duties, they would be enabled to be indemnified to the extent of the assets. The executors, however, were not sued, and, therefore, the sum recovered could not be allowed in passing the executorship accounts. On the other hand, A. H. Baily declined to take his chance of having it allowed in his receivership accounts.

Feb. 2.—On a further application his lordship gave leave to the plaintiff in the libel action for equitable execution of the beneficial interest of A. H. Baily in the testator's estate for the sum due from Baily & Co. under the judgment.

Chancery Division.
CHITTY, J.
Feb. 9.
Re MORRIS'S SETTLEMENT.

Practice—Appointment of New Trustees—Vesting Order—Summons in Chambers—Trustee Act, 1850, *s.* 34—*Rules of Supreme Court*, 1883, *Order LV., rule* 13*a*.

Rules of Supreme Court, 1883, Order LV., rule 13*a* (December, 1888), which provides that applications for the appointment of new trustees may be made to a judge in chambers by summons is not confined merely to applications for the appointment of new trustees, but extends to such applications when also asking for a vesting order, and the Court under the above-mentioned rule has jurisdiction to make an order simultaneously appointing new trustees and vesting the property in the trustees so appointed.

D. L. Alexander for the petitioners.

Chancery Division.
NORTH, J.
Feb. 12.
DETFOLD *v.* DETFOLD.

Settlement—Forfeiture Clause—Gift over on Bankruptcy or Alienation by Process of Law.

Adjourned summons.

By a marriage settlement executed on April 24, 1881, after reciting that certain funds belonging to the husband had been transferred into the names of the trustees, it was declared that the trustees should stand possessed of the funds upon trust to pay the income to the husband during his life 'or till he shall become a bankrupt or shall assign, charge, or encumber the said income or shall do or suffer something whereby the same or some part thereof would through his act, default, or by operation or process of law, if belonging absolutely to him, become vested in or payable to some other person or persons.' And upon the determination of the aforesaid trust in favour of the husband the trustees were to pay the income to the wife during her life for her separate use.

On June 8, 1888, a judgment for debt was obtained against the husband, and on July 19 an order was made appointing the judgment creditor receiver of the dividends of the trust fund subject to prior incumbrances. On September 25 a receiving order was made against the husband, and he was afterwards adjudicated a bankrupt. The question raised on the present summons was whether the gift over in favour of the wife took effect on July 19, when the order appointing a receiver was made, or whether the gift over was void as against the trustee in bankruptcy.

Beddall, for the plaintiffs (the surviving trustees of the settlement).

Cozens-Hardy, Q.C., and *R. Morris*, for the wife.

Muir Mackenzie, for the official receiver, who was also the trustee in the bankruptcy of the husband.

Horsburgh for the judgment creditor.

NORTH, J., held that the forfeiture took effect in favour of the wife on the making of the order appointing a receiver. He said that, although a man could not, as was decided in *Higinbotham* v. *Holme*, 19 Ves. 87, limit the income of his property to himself for life, with a gift over in the event of his bankruptcy, *Brooke* v. *Pearson* (27 Beav. 181) and *Knight* v. *Browne* (30 Law J. Rep. Chanc. 649; 7 Jur. N.S. 894) showed that such a limitation with a clause of forfeiture in the event of the settlor making a voluntary alienation would be perfectly good. And the same principle applied to a clause of forfeiture in the event of an alienation by process of law in favour of a single creditor. In neither case was the clause a fraud on the bankruptcy laws.

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COURT OF APPEAL.

Court of Appeal.
LORD ESHER, M.R.
BOWEN, L.J.
FRY, L.J.
Feb. 13.
} CROWE *v.* PRICE.

Practice—Execution—Appointment of Receiver—Pension of Retired Officer of Her Majesty's Forces—Commutation Money—Army Act, 1881 (44 & 45 *Vict. c.* 58), *s.* 141—*Pensions Commutation Act*, 1871 (34 & 35 *Vict. c.* 86).

Appeal from the decision of a Divisional Court (*ante*, p. 19).

The defendant was a retired deputy-commissary-general, who was adjudicated a bankrupt in 1885. An order was made for the payment of a monthly sum out of his pension to his trustee. In April, 1888, an arrangement, by which he commuted a part of his pension, and his creditors accepted a composition, was carried out under the order of the Court. When all claims had been satisfied there remained in the hands of the trustee, according to his final account, a balance of 225*l.* 17*s.* 9*d.* due to the defendant, consisting of 109*l.* odd (part of his pension money paid to the trustee under the aforesaid order) and 116*l.* odd (part of the commutation money).

The plaintiff, who had recovered judgment, applied that he should be appointed receiver of the whole amount of the above-mentioned balance.

The Divisional Court (LORD COLERIDGE, C.J., and HAWKINS, J.) held that, while no receiver could be appointed in respect of the pension money, the rules applying to pensions did not apply to commutation money, which could be dealt with either by appointing a receiver or by restraining the defendant from receiving it.

H. Reed for plaintiff.

Sidney Woolf for defendant.

Their LORDSHIPS dismissed the appeal, being of opinion, as to the sum of 109*l.*, that as it was pension to be paid to the defendant it could not, upon the authority of *Lucas* v. *Harris*, 56 Law J. Rep. Q. B. 15, be assigned or taken in execution, and consequently that the plaintiff was not entitled to be appointed receiver in respect of that sum, but that he was entitled as to the commutation money.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
LOPES, L.J.
Feb. 20.
} *Re* PATRICK.

Probate Division—Non-contentious Business—Decision of Registrar—Time for Appealing—Rules of Supreme Court, 1883, *Order LIV., rule* 21.

Appeal from decision of BUTT, J. (*ante*, p. 8).

Cozens-Hardy, Q.C., and *Cranstoun* for appellant.

Inderwick, Q.C., and *Lipscomb* for respondent.

Their LORDSHIPS dismissed the appeal, with costs.

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HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
Feb. 15.
BLAKE *v.* SUMMERSLEY.

Mortgage—Foreclosure—Order Absolute—No Proceeding for One Year—Notice—Rules of Court, 1883, *Order LXIV., rule* 13.

In a mortgagee's action for foreclosure the usual judgment was given on April 9, 1884, directing an account and payment within six months of the chief clerk's certificate. The certificate was made on August 1, 1884, and the six months expired on February 1, 1885. The defendant, the mortgagor, made default in payment, and the mortgagee now moved for foreclosure absolute.

Swinfen Eady, for the motion, Order LXIV., rule 13, which requires that 'in any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed,' does not apply to a case like this in which there has been a judgment. 'Proceeding' means proceeding towards, and not after a judgment. A foreclosure action, like all actions, has only one 'judgment,' foreclosure absolute being effected by an 'order.'

KAY, J.: Anything preceding the final judgment or order is a 'proceeding' in the action. You must give a month's notice to the defendant before moving for foreclosure absolute.

Chancery Division.
KAY, J.
Feb. 19.
STOKELL *v.* NIVEN.

Statute of Frauds—Agreement for Lease—Names of Parties—Signature by Tenant—29 Car. II., c. 3, s. 4.

This was an action by the lessor for specific performance of an agreement for a lease, which now came on for hearing on a point of law under Order XXV., rule 2, as to whether there was a valid agreement under the Statute of Frauds. The plaintiff and defendant had signed an agreement in the following terms:—

December 14, 1887.

I, T. W. Stokell, proprietor of the Whessoe Brick and Tile Works, Darlington, agree to let above works as they stand . . . for an annual rent of 150*l.* per year, the tenant allowed to make as many bricks and tiles, &c., as he pleases, up to 70,000 per week free of further charge, the tenant to pay me 6*d.* per thousand for all bricks, tiles, &c., above that number, as a royalty.

No further charges except taxes; a schedule of the whole machinery, plant, &c., to be taken, and to be kept in good repair. Allowance for reasonable depreciation when given up. And any extension of buildings, machinery, or plant erected by the tenant I agree to take from him at the expiration of the lease at a fair valuation; the rent to be paid every quarter of the year. Tenancy to commence from February 1, 1888, for a five-year lease.

Signed { H. NIVEN, T. W. STOKELL.

The defendant did not allege that he signed the document in any other character than that of lessee.

Renshaw, Q.C., and *Davenport*, for the defendant, contended that there was nothing on the face of the document to show who the tenant was and that, therefore, no action could be brought under section 4 of the Statute of Frauds.

Marten, Q.C., and *W. R. E. Barker*, for the plaintiff, were not called on.

KAY, J., said that, on the construction of the document, the defendant must be taken to have signed as lessee, and, accordingly, no parol evidence was required to establish that fact; the case, therefore, was not within the statute, and the question of law must be answered in favour of the plaintiff.

Chancery Division.
NORTH, J.
Feb. 7.
In re SOLOMON *to* MEAGER.

Vendor and Purchaser—Equitable Mortgagee—Power to convey Legal Estate under Lord Cranworth's Act (23 & 24 *Vict. c.* 145), *s.* 15.

By deed dated August 19, 1879, the freeholder of certain lands charged them with the payment of 300*l.* and interest, and covenanted to execute a legal mortgage when required so to do. In 1888 the equitable mortgagees contracted to sell the land under the power of 23 & 24 Vict. c. 145 (Lord Cranworth's Act). The purchaser having required the concurrence in the conveyance of the mortgagor for the purpose of conveying the legal estate, the present summons was taken out by the vendors to have it determined whether they were not able to convey the legal estate without the mortgagor's concurrence.

Bakewell for the vendors.

Brett for the purchaser.

NORTH, J., held that the vendors could convey the legal estate, and that the concurrence of the mortgagor was unnecessary.

Chancery Division.
NORTH, J.
Feb. 7.
FLINN *v.* POUNTAIN.

Vendor and Purchaser—Agreement for Sale—Subsequent Equitable Mortgage by Vendor—Priorities.

By agreement in writing, dated March 16, 1886, J. T. Pountain agreed to sell, and W. Gilbey agreed to purchase, certain copyhold premises belonging to Pountain, but for which he was not then on the Court Rolls. On August 4, 1886, Pountain was admitted on the Court Rolls. On August 14, 1886, the abstract of title was delivered to Gilbey's solicitors. On August 25, 1886, Pountain deposited the title-deeds to the property with his bankers, and signed a memorandum by which he charged them for the purpose of securing his account. Shortly afterwards the title was accepted by Gilbey, but he never obtained possession of the title-deeds. On July 9, 1888, the bankers assigned their equitable mortgage to J. Flinn, and on July 14, 1888, he took out the present summons against Pountain and Gilbey, asking for enforcement of his equitable mortgage against both defendants by foreclosure or sale.

Higgins, Q.C., and *Wilkinson* for the plaintiff.

Cozens-Hardy, Q.C., and *R. F. Norton* for Gilbey.

Swinfen Eady for Pountain.

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NORTH, J., held that Gilbey had not been guilty of any neglect with respect to the deeds, and that his right to have the property conveyed to him on payment of his purchase-money was prior to any right acquired by the plaintiff under the equitable mortgage.

Chancery Division. NORTH, J. Feb. 8. — SOCIÉTÉ INDUSTRIELLE ET COMMERCIALE DES MÉTAUX *v.* COMPANHIA PORTUGUEZA DOS MINAS DE HUELVA.

Practice—Defendant out of Jurisdiction—Form of Writ—Substituted Service—Rules of Supreme Court, 1883, *Order II., rule* 5; *Order X.*

This was an action against a Portuguese company which had no place of business within the jurisdiction, though they were described in the writ, which was in the ordinary form for service within the jurisdiction, as 'of Swansea.'

The defendant company now moved to set aside the writ and discharge an order which had been obtained for substituted service on persons within the jurisdiction.

Higgins, Q.C., and *Hart* for the motion.

Cozens-Hardy, Q.C., and *Kirby contrà*.

NORTH, J., held that the writ not being in the form required for service on defendants out of the jurisdiction, it must be set aside and the order for substituted service discharged.

Chancery Division. NORTH, J. Feb. 18, 19. — *In re* ALLFREY. ALLFREY *v.* ALLFREY.

Copyholds—Devise of Manor—Enfranchisement Moneys—4 & 5 Vict. c. 35, *s.* 73—15 & 16 *Vict. c.* 51, *s.* 39.

Adjourned summons.

Under the will of Edward Allfrey (who died in 1874) H. W. Allfrey was absolutely entitled to the manor of R., in the county of Sussex, subject to an executory devise over in the event of his dying without issue living at his death.

H. W. Allfrey (who died in 1887) by his will devised the manor of R. to his eldest son Henry, and he devised and bequeathed all his residuary real and personal estate to trustees upon the trusts therein mentioned. During his lifetime H. W. Allfrey enfranchised a portion of the copyholds of the manor under the Copyhold Acts, 1852 and 1858, and the enfranchisement moneys were paid to trustees appointed by the Copyhold Commissioners for the purpose of receiving such moneys.

The question raised by this summons was whether the moneys in the hands of the trustees passed by the devise of the manor of R. or whether they formed part of the residuary estate of the testator.

Everitt, Q.C., and *Gent* for the plaintiffs, the residuary devisees.

Cozens-Hardy, Q.C., and *Alexander* for the devisee.

Church for another party.

NORTH, J., held that the moneys did not pass by the devise of the manor, but passed under the residuary devise.

Chancery Division. STIRLING, J. Feb. 9. — *In re* DANGAR'S TRUSTS.

Solicitor—Duty as Solicitor of Petitioner—Knowledge of True Title to Fund in Court—Failure to bring True Title before the Court—Erroneous Application of Fund—Liability of Solicitor to Recoup Loss to Beneficiary.

A legacy of 500*l.* bequeathed upon trust for M. M. D., an infant, and a legacy of 7,000*l.* settled upon trust for L. D. and her children, were both paid into Court by the trustees to the credit of one and the same account, entitled in the matter of the trusts of the will of the testator. The solicitor who acted for the trustees afterwards acted for L. D., who presented a petition asking for the transfer of the fund representing her legacy to a separate account and for payment of the dividends to her. The fact that the fund in Court represented the two legacies was not mentioned in the petition nor brought to the knowledge of the Court in any way, and an order was erroneously made carrying over the whole fund to an account entered in the matter of the trusts of the 7,000*l.* legacy, and under that order the dividends on the whole fund were paid to L. D. during her life. M. M. D., having attained twenty-one, presented a petition seeking to render the solicitor directly liable for the loss of the accumulated dividends upon the 500*l.* legacy.

H. Terrell for the petitioner.

W. Pearson, Q.C., and *W. C. Druce* for the solicitor.

Ingle Joyce for the Paymaster-General.

Chubb for other parties.

STIRLING, J., held that the estate of L. D. was primarily liable for the dividends received by her during her life; but that after her estate was exhausted the solicitor was liable to make good any deficiency, and that he was primarily liable for the costs.

Chancery Division. KEKEWICH, J. Feb. 8. — HOBLYN *v.* HOBLYN.

Settlement—Family Re-settlement—Unusual Provisions—Cancellation—Rectification.

The plaintiff, tenant-in-tail in remainder expectant upon the death of a tenant-for-life, claimed to set aside a re-settlement executed by him upon attaining his majority, on the ground of paternal influence and want of proper independent advice.

The matter had been carried out on behalf of all parties by the family solicitor. The property consisted of freeholds, and the re-settlement followed upon the usual disentailing assurance.

The re-settlement contained the provisions usual in such a deed, and other provisions which, although not altogether usual, were held by the Court to embody the plaintiff's intentions. But it also contained a power for the plaintiff's father, the tenant-for-life, to raise 2,000*l.* by charge upon the property, as well as a provision for a jointure for the mother. In the course of the proceedings the father and mother released the estate from those charges.

Barber, Q.C., and *Method*: *Warmington, Q.C.*, and

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Clydesdale; and *Ingle Joyce* and *Whitaker* for the various parties.

KEKEWICH, J., held that the plaintiff was not entitled to have the re-settlement set aside, and that, having regard to the releases by the father and mother, there was no case for rectification.

Bankruptcy. Jan. 29. } *In re* HUGGINS; *ex parte* HUGGINS.

Bankruptcy—Order of Discharge—Suspension of—Condition attached to Order—Bankruptcy Act, 1883 (46 & 47 *Vict. c.* 52), *s.* 28, *subs.* 2.

This was an appeal by a bankrupt from the order of a County Court judge who suspended the order of his discharge for six months, and attached the condition that the bankrupt should consent to judgment for a certain sum being entered against him by his trustee in bankruptcy. The order was made under 46 & 47 Vict. c. 52, s. 28, subs. 2, which enacts that 'the Court shall take into consideration a report of the official receiver as to the bankrupt's conduct and affairs, and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to his after-acquired property.' The official receiver had reported that the bankrupt had omitted to keep such books of account as were usual and proper in his business; that he had continued to trade after he knew himself to be insolvent; and that he had contracted debts without having, at the time of contracting them, any reasonable expectation of being able to pay them.

The bankrupt appealed against the judgment of the County Court judge, attaching the condition to the suspended order of discharge.

Sidney Woolf for the appellant.

Muir Mackenzie for the official receiver.

The COURT (CAVE, J., and CHARLES, J.) held that the County Court judge had no power under section 28, subsection 2, of the Bankruptcy Act, 1883, to attach a condition to a suspended order of discharge.

Queen's Bench Division. Jan. 6. Feb. 2. } *In re* HOLLINGSHEAD; *ex parte* HEUPY AND ANOTHER.

Bankruptcy—Act of, by Debtor—Deed of Assignment Unstamped and Unregistered—Deeds of Arrangement Act, 1887 (50 & 51 *Vict. c.* 57), *ss.* 5, 17—*Bankruptcy Act*, 1883 (46 & 47 *Vict. c.* 52) *s.* 4 (*a*).

Appeal from a County Court.

A debtor had executed a deed of assignment for the benefit of his creditors which had been neither stamped nor registered pursuant to section 5 of the Deeds of Assignment Act, 1887. The judge of the County Court held that the execution of the deed was not an act of bankruptcy.

Kent for petitioning creditor.

No counsel appeared in opposition.

The COURT (LORD COLERIDGE, C.J., and CAVE, J.) held that, notwithstanding section 5, the deed was an act of bankruptcy within section 4 (*a*) of the Bankruptcy Act, 1883, since it was provided by section 17 of the Deeds of Arrangement Act, 1887, that nothing in that Act should be construed to repeal, or should affect, any provision of the law for the time being in force in relation to bankruptcy.

Queen's Bench Division. (*Magistrates' Case.*) Jan. 29, 30. Feb. 6. } REGINA *v.* PARLBY AND ANOTHER (JUSTICES).

Public Health Act, 1875 (38 & 39 *Vict. c.* 55), *ss.* 27, 32–34, 91–96, 98, 105—*Flow of Sewage—Offensive Nuisance—Unconditional Order of Discontinuance—Jurisdiction of Justices.*

This was an order *nisi* calling upon justices to show cause why a writ of *certiorari* should not issue to bring up and quash an order under their hands and seals whereby the Compton Gifford Local Board were unconditionally ordered to discontinue a flow of sewage into certain subsidence tanks constructed under statutory authority, with the approval of the Local Government Board, on the ground that it was made without jurisdiction.

Alderson Foote showed cause.

The Solicitor-General (*Sir Edward Clarke, Q.C.*), and *R. S. Wright* in support.

Cur. adv. vult.

The COURT (HUDDLESTON, B., and WILLS, J.) held that the order must be made absolute, since the provisions of sections 91–96 of the Act had no application to sewage works constructed under section 27; and that the authority conferred upon justices by these sections was intended for ordinary and comparatively simple cases, and did not permit them to set aside a scheme of drainage sanctioned by the Local Government Board, involving, perhaps, an enormous outlay of money. The proper course for a complainant to adopt in such a case was to obtain leave to file an information in the name of the Attorney-General.

Order absolute.

Probate, Divorce, and Admiralty Division. Feb. 13. } STOKER *v.* STOKER, SKIDMORE, AND MURRAY. STOKER *v.* STOKER.

Divorce—Both Parties Guilty of Adultery—Adultery of Husband Incestuous—Decree 'nisi'—Discretion.

These were cross petitions. The jury found that both parties had been guilty of adultery. That of the husband had been committed some years previously with his wife's sister, and had been fully condoned by the wife.

Bayford asked the Court to exercise its discretion, and pronounce a decree *nisi* on the husband's petition. He cited *Rose* v. *Rose*, 52 Law J. Rep. P. D. & A. 25; L. R. 8 P. D. 98.

BUTT, J., held that, while the Court had a discretion under certain circumstances to pronounce a decree *nisi* in favour of a petitioner who had been guilty of matrimonial misconduct, such discretion must be exercised judicially and not fancifully or arbitrarily, and that the circumstances of the present case did not warrant its exercise.

Application refused.

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Court of Appeal.
LORD ESHER, M.R.
BOWEN, L.J.
FRY, L.J.
Feb. 13.
} AMON *v.* BOBBETT.

Practice—Costs—Claim and Counter-claim—Action of Contract in High Court—Claim under, but Counter-claim over, 50l.—Scale of Costs—Order LXV., rule 12.

Appeal from Divisional Court.

Action by plaintiff to recover 48*l.* for goods sold and delivered. Defendant admitted plaintiff's claim, but set up a counter-claim for 123*l.* for alleged breach of a contract.

At the trial a verdict for the plaintiff on claim and counter-claim was given, and judgment was entered for the plaintiff, with costs.

On taxation of the costs the master refused to allow the plaintiff the costs of the counter-claim on the High Court scale.

DENMAN, J., referred the matter to the Court.

The Divisional Court (LORD COLERIDGE, C.J., and HAWKINS, J.), holding that they were bound by authority, dismissed the appeal.

W. S. Robson (with him *Bigham, Q.C.*) for the plaintiff.

H. F. Dickens for the defendant.

Their LORDSHIPS allowed the appeal, being of opinion that, although the plaintiff was only entitled to costs on the County Court scale in respect of the claim, yet he was entitled to have the costs of the counter-claim taxed on the High Court scale.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
LOPES, L.J.
Feb. 20, 21.
} *In re* JONES.
THOMPSON *v.* MONTGOMERY.

Injunction—Trade-name—Trade-mark—Name of Place—'Stone ale'—Rectification of Register—Patents, Designs, and Trade-marks Act, 1883, *ss.* 70, 90.

Appeal from a decision of CHITTY, J., reported 58 Law J. Rep. Chanc. 93.

Sir Horace Davey, Q.C., Byrne, Q.C., and *V. Somers Browne* for the appellants.

Romer, Q.C., and *Waggett* for the respondents.

Sir Horace Davey, Q.C., replied.

Their LORDSHIPS held that as there was no evidence to show that the words 'Stone ale' had been used as a trade-mark previous to 1875, and that, as the evidence showed that the words were distinctive of the quality of the beer rather than indicating the manufacturer, the words 'Stone ale' could not be registered as a trade-mark; but affirmed the decision of CHITTY, J., with regard to the injunction.

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Court of Appeal.
LORD ESHER, M.R.
BOWEN, L.J.
FRY, L.J.
Feb. 25.
THE MOORCOCK.

Ship—Jetty in Tidal River—Implied Representation as to Bottom of River alongside Jetty.

Appeal from the judgment of BUTT, J., reported 58 Law J. Rep. P. D. & A. 15.

The action was brought by the owners of the Moorcock against the owners of St. Bride's Wharf, Wapping, for damage occasioned to the Moorcock by reason of her taking the ground alongside the defendants' jetty in the Thames at the wharf.

The plaintiffs had for good consideration arranged with the defendants that the Moorcock should be discharged at the defendants' wharf. In order to do this it was necessary that the vessel should be moored alongside the jetty, and accordingly she was brought there and properly moored. As the tide ebbed the vessel, which had a heavy cargo on board, settled down, and, from the uneven nature of the ground, suffered damage, her back being broken.

Butt, J., found that there had neither been a warranty nor express representation that the place was safe and suitable for the vessel; but the learned judge was of opinion that the defendants must be taken by implication to have represented at least this much: that they had taken reasonable care to ascertain that the bottom of the river at the jetty was in such a condition as not to endanger the vessel using the premises in the ordinary way. The learned judge found that the defendants had not done this, and therefore he gave judgment for the plaintiffs.

The defendants appealed.

Finlay, Q.C., and *F. W. Hollams* for the defendants.

J. G. Barnes, Q.C., and *Hurst* (*W. S. Robson* with them) for the plaintiffs.

Their LORDSHIPS affirmed the judgment of Butt, J., and on the same grounds.

Appeal dismissed.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
LOPES, L.J.
Feb. 23, 26.
In re ARBITRATION BETWEEN THE YEADON LOCAL BOARD AND THE YEADON WATERWORKS COMPANY.

Arbitration—Single Arbitrator—Umpire—Time for making Award—Public Health Act, 1875 (38 & 39 *Vict. c.* 55), *s.* 180, *subs.* 9.

Appeal by the Waterworks Company from an order of KAY, J., dismissing a motion brought by them to set aside an award made in the above-mentioned arbitration, the ground alleged being that the award was not made within the period limited by the Public Health Act.

In December, 1887, the Board served the company with notice of the appointment of an arbitrator under sections 179 and 180 of the Public Health Act 'in the matter of the Act and of a certain difference,' &c.

The company thereupon appointed an arbitrator on their side. On January 3, 1888, the arbitrators met, but only extended the time for making the award until February 20. On January 10 the arbitrators appointed an umpire. On January 25 a notice was given, signed by the arbitrators and umpire, of a meeting to be held on February 1, and on that day the arbitrators and umpire met for the first time, and were attended by the solicitors for both parties.

On that day one of the arbitrators retired, and the meeting was adjourned *sine die*.

On April 19, 1888, the umpire made his award. Although notice to attend had been given to both parties, the company were not represented on that occasion.

Sir H. Davey, Q.C., Renshaw, Q.C., and *Byrne* for the appellants.

Rigby, Q.C., Marten, Q.C., and *Procter* for the board.

Their LORDSHIPS allowed the appeal. They were of opinion that the time limited by the Public Health Act, s. 180, subs. 9, for an umpire to make his award was a period of twenty-one days from the date of the reference to him, or such extended time as might be appointed, being the same period as that limited to two or more arbitrators by subsection 8; and that the provision in subsection 6 as to a single arbitrator did not apply to an umpire. But even if the umpire had two months within which to make his award, as was contended by the respondents, that period must begin from February 1 when he held his first meeting, and not February 20 when the powers of the original arbitrators expired, and the award was consequently too late.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
LOPES, L.J.
Feb. 27, 28.
ARNISON *v.* SMITH.

Joinder of Several Plaintiffs—Trial of Action—Transmission of Interest—Order to carry on Proceedings—Rule of Court, 1883—*Order XVI., rule* 1—*Order XVII., rules* 2, 4.

Some fifty persons had joined as plaintiffs in bringing the action, claiming damages against the defendant on the ground that they had been induced, through misrepresentations in a prospectus issued by him, to take shares in a certain company.

The writ was issued on October 12, 1887, and on January 2, 1888, issue was joined. The action came on for trial before KEKEWICH, J., on August 8, and was heard during that and the five following days, when his lordship gave judgment in favour of a large number of the plaintiffs who had been present at the trial, and who had substantiated their case before him, and as regarded two, who were dead, made no order.

It appeared that on November 28, 1887, one of the two plaintiffs, named Edwards, died, and her will was proved on December 27, 1887; the other, named Wells, died on July 17, 1888, and his will was proved on August 7, 1888. The fact of the death of either of these plaintiffs was not known to the solicitor who conducted the action before the trial of the action. Their representatives now applied, under Order XVII., rules 2 and 4, that they might be allowed to carry on the proceedings in the action. Kekewich, J., refused the application, on the ground that the action had been already tried and could not be tried again.

The representatives now appealed against such refusal.

Oswald, for the appellants, urged that, as regards these two plaintiffs, there had been no trial; that each plaintiff had a separate cause of action, and that the

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action should be treated as so many separate actions; that such a course was not only convenient, but the refusal might be attended with grave injustice to the plaintiffs —*e.g.* admissions had been made by the defendants which included the case of the appellants, but which, if a new action were brought, might not be repeated.

Farwell, contrà, not called upon.

COTTON, L.J., held that the Court had no jurisdiction to make the order. The action had been tried, and although each plaintiff had a separate cause of action, the action in which they had all joined was only one action.

LINDLEY, L.J., and LOPES, L.J., while declining to say that the Court had no jurisdiction to make the order in a case where the circumstances require it to be made, held that the present was not such a case.

Appeal dismissed.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
BOWEN, L.J.
Feb. 28.
} EDISON AND SWAN ELECTRIC LIGHT COMPANY *v.* HOLLAND.

Practice — Costs — Third-Party Notice — Indemnity— Rules of the Supreme Court, Order XVI., rules 48–54.

An action to restrain the infringement of two patents was brought against Holland and the Jablochkoff Company, who had respectively used and sold certain lamps. The defendants served a third-party notice upon the Anglo-American Brush Company, the manufacturers of the lamps, for indemnity. The Brush Company appeared and admitted their liability to the defendants.

Upon an application by the defendants for directions under Order XVI., rule 52, the Court ordered that the Brush Company should be at liberty to appear at the trial of the action and take such part therein as the Court should direct, and should be bound by the decision of the Court on any question as to the indemnity which might arise between the Brush Company and the defendants, but not otherwise.

At the trial the Brush Company appeared as third parties, but filed no pleadings.

KAY, J., decided in favour of the plaintiffs upon one patent and against the plaintiffs on the other, and directed the costs to be set off; but he made no order as to the third parties.

The plaintiffs appealed from this decision, and served the defendants and the third parties.

Their LORDSHIPS allowed the appeal, with costs against the defendants.

The plaintiffs then asked for an injunction against the Brush Company and for costs against them, with leave to amend, if necessary, by making them defendants to the action.

The Attorney-General (*Sir R. Webster, Q.C.*), *Aston, Q.C., Moulton, Q.C.*, and *Bremner* for the plaintiffs.

Sir H. Davey, Q.C., Finlay, Q.C., and *J. C. Graham*, for the defendants and third parties, submitted that it was too late to amend and claim substantial relief against third parties who had not been made defendants; but as the solicitors for the third parties were also the solicitors for the defendants, they did not dispute the right of the plaintiffs to costs against the third parties.

Their LORDSHIPS held that the plaintiffs were not entitled to an injunction against the Brush Company, and that liberty to amend ought not to be given, but that the Court had jurisdiction, under Order XVI., rule 54, to make an order against third parties for payment of the costs of the action, and that such an order ought to be made.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
LOPES, L.J.
Feb. 28. March 1.
} LOWTHER *v.* HEAVER.

Building Agreement—Right to Lease on certain Conditions—Action to enforce Lease—Pleading—Admission of Allegation of Fact—Amendment—Practice—Rules of Supreme Court, Order XIX., rule 13.

Appeal of defendant from a decision of KEKEWICH J., noted Law J. N. C. 1888, p. 131.

J. G. Wood (*Warmington, Q.C.*, with him) for the appellant.

W. Barber, Q.C., and *Cree* for the plaintiff.

B. B. Rogers for a defendant in the same interest.

Their LORDSHIPS held that Kekewich, J., was right in refusing to allow the defendant leave to amend as asked, and that he was also right in giving judgment for the plaintiff.

Court of Appeal.
LORD ESHER, M.R.
BOWEN, L.J.
FRY, L.J.
Feb. 28.
March 1, 2.
} THE VINDOBALA.

Co-ownership—Rights and Liabilities of Purchasers of Shares after Commencement of Voyage—Of Owners not Dissenting from Employment of Ship—Trading and Non-Trading Owners.

Decision of BUTT, J., reported 57 Law J. Rep. P. D. & A. 37, overruled, on the ground that, in point of fact, when the appellant co-owners withdrew their authority to the managing owner, his correspondent in Amsterdam had neither authority from the managing owner to make a charter-party nor purported to do so.

Appeal allowed.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
LOPES, L.J.
March 4.
} *In re* TOWRY. DALLAS *v.* TOWRY.

Will—Codicil—Construction—Gift by Will of Chattels by reference to Limitations of Real Estate—Alteration by Codicil of Limitations of Real Estate—Heirlooms.

Appeal from STIRLING, J., noted Law J. N. C. 1888, p. 148.

The testator, by his will, devised his Harewood Lodge estate to the use of his cousin, H. G. Hopkins, for life, after his death to the use of his wife for her life, and after the death of the survivor to the use of the children of H. G. Hopkins in strict settlement; and in default of such issue to the use of the testator's cousin F. T. A. Law, with a gift over in case the latter should become a Roman Catholic.

The testator then gave certain chattels in, about, or belonging to Harewood Lodge to trustees in trust to permit the same to be held and enjoyed as heirlooms 'by the person or persons who for the time being shall

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be entitled to my said messuage or tenement called Harewood Lodge under the devise thereof hereinbefore contained.' The testator then gave a legacy of 20,000*l.* to his trustees upon trust 'for the person or persons for the time being entitled to my estate called Harewood Lodge.' The will contained a power of leasing; and the testator directed that in any lease to be granted of Harewood Lodge the same might include the chattels thereinbefore bequeathed as heirlooms and to go therewith.

By a codicil the testator devised Harewood Lodge to H. G. Hopkins, his wife and children; after to the son of Charles Law absolutely—if he died before age to another son, if any; and then to F. T. A. Law, with a gift over as before. The codicil contained no reference to the heirlooms, but the testator directed the 20,000*l.* to go 'the same as will,' and except as there intimated he confirmed his will.

In the events which happened Harewood Lodge devolved upon the only son of Charles Law, C. T. H. Law; and the question was, whether he was also entitled to the chattels as heirlooms, and to the legacy of 20,000*l.*

STIRLING, J., held that he was not entitled.

C. T. H. Law appealed from this decision.

Fischer, Q.C., Sir H. Davey, Q.C., and *Cordery* for the appellant.

Buckley, Q.C., and *Morshead, Methold, Haldane*, and *Pownall* for the several respondents.

Their LORDSHIPS allowed the appeal. They held that there was a clearly expressed intention in the will that the chattels and the legacy of 20,000*l.* should accompany the possession of Harewood Lodge, and that that intention had not been revoked by the codicil. Consequently the appellant was entitled. The words 'hereinbefore contained' created a difficulty in the case of the heirlooms, but it would be wrong to sacrifice the intention of the testator in order to give effect to those words. The case fell within *Carrington* v. *Payne*, 5 Ves. 404, and not within *Martineau* v. *Briggs*, 23 W. R. 889.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
LOPES, L.J.
March 6.

In re THE AUSTRALIAN WINE IMPORTERS (LIM.), AND MASON.

Trade-mark—Registration—'Calculated to deceive'—Patents, &c., Act, 1883, *ss.* 72, 73.

Appeal from decision of KAY, J., noted *ante* at p. 26.

Renshaw, Q.C., and *J. Cutler* for appellants.

Macrory for respondents.

Their LORDSHIPS dismissed the appeal with costs.

HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
Feb. 13.

ROUND *v.* TURNER.

Settled Land Act—Contract for Sale—Expenses of working Farm until Completion—Charge on Purchase-moneys when received—Settled Land Act, 1882, *s.* 21, *subs.* 10.

This was a summons by the trustees and infant tenant-in-tail in possession of settled estates to obtain the sanction of the Court to raise a sum of 1,200*l.* to stock and work an unlet farm, forming part of the settled estates, and to declare the expenses to be a charge on the purchase-money of the estates when received. The trustees had contracted under the Settled Land Act, 1882, to sell the settled estates, and the purchase was to be completed in October next.

Ince, Q.C., and *MacSwinney*, for the summons, referred to the Settled Land Act, 1882, s. 21, subs. 10.

Douglas Round appeared for infants entitled in remainder.

KAY, J., said that the Court had no power to make the order asked. If trustees *bonâ fide* expended moneys in managing their trust property and proved that the expenditure was beneficial to the property and in the nature of salvage expenditure, the Court would do all in its power to indemnify them; but the Court had no power under the section referred to, or otherwise, to create a charge on capital moneys which had not been received. His lordship directed the summons to stand over till the completion of the contract.

Chancery Division.
KAY, J.
Feb. 13.

In re THE ART ENGRAVING COMPANY (LIM.).

Company — Winding-up — Parish Rates — Priority—Judicature Act, 1875, *s.* 10—*Bankruptcy Act*, 1883, *s.* 40.

This was an adjourned summons raising the question whether a parochial rate which became due and payable before the commencement of the winding-up of the company was payable to the vestry in priority to other creditors. The Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62), which expressly gives such priority, did not apply to the present case, as the winding-up commenced before 1889.

Alexander, for the vestry, contended that by the combined operation of section 10 of the Judicature Act, 1875, and section 40 of the Bankruptcy Act, 1883, parish rates were payable in priority to the general creditors.

Bramwell Davis, for the liquidator, relied on *In re Maggi*, 51 Law J. Rep. Chanc. 560; L. R. 20 Chanc. Div. 545.

KAY, J., said that, independently of the new Act, it was settled by authority that rates which became due and payable before the commencement of the winding-up were not payable in priority; the new Act only applied where the winding-up commenced after the commencement of the Act, and therefore the vestry were not entitled to priority.

Chancery Division.
KAY, J.
Feb. 13, 14.

In re WATERS.
PRESTON *v.* WATERS.

Legacy—Appropriation of Investments—Payment over of Residue—Fall in Value of Appropriated Investments—Expenditure on Mortgaged Property—Liability of Trustees.

Testator, who died in 1876, by his will gave eight legacies of 4,000*l.* each to the defendants upon trusts for his respective nieces for life, with remainder to their respective children, and gave all his personal estate on trust for conversion and payment of his debts

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and the legacies thereby given, and as to the residue on trust for A. Waters absolutely.

The defendants retained two investments on mortgage which had been made by the testator himself. They also lent 4,000*l.* to one of themselves on an equitable mortgage (which was an unauthorised investment, but as to which there was no suggestion that the money would be lost); and in 1881 they set apart certain investments (including the 4,000*l.* so lent and the two mortgage investments made by the testator), then representing in value 32,000*l.*, to answer the eight legacies of 4,000*l.* each. They afterwards paid or specifically appropriated part of these securities to answer two of the legacies of 4,000*l.*, and also paid over the residue of the estate to the residuary legatee. Some of the appropriated securities having risen in value, the residuary legatee, in 1882, brought an action claiming the benefit of this rise in value; but, early in 1884, an order was made by which he gave up his claim, and the action was stayed. The two mortgage securities had since fallen in value; the farms comprised in them were unlet; and the defendants had expended nearly 2,000*l.*, part of the appropriated securities, in cultivating them; and the remaining securities were now insufficient to answer the six remaining legacies. This was an action by one of the nieces and her children claiming to have the full amount of their legacy made good by the defendants.

Marten, Q.C., and *Creed* for the plaintiffs.

Renshaw, Q.C., and *Davenport* for the defendants.

KAY, J., said that the defendants had a right to make the appropriation of the 32,000*l.*, and that, when the appropriation was once made, the legatees were entitled to the appropriated securities for better or worse, and the residuary legatee to the residue; and that the fact that the equitable mortgage given by one of the defendants formed part of the appropriated securities did not, under the circumstances, affect this question. Nor were the defendants liable for continuing the investments on mortgage made by the testator, nor for expending further money in the cultivation of the farms, which the evidence showed was the best thing to be done. The action entirely failed so far as it sought to charge the defendants on these grounds. There would be a declaration that two of the legacies had been duly paid or appropriated out of the 32,000*l.*, and that the remaining securities were at present unappropriated amongst the six remaining legatees; and the defendant mortgagor must pay or give a legal mortgage for the 4,000*l.*

Chancery Division.
KAY, J.
Feb. 14, 18.

SCADDING *v.* THE ST. PANCRAS BURIAL BOARD.

Burial Fees—Right of Church Trustees—Removal of Soil and Human Remains from another Burial Ground—Burials Act, 1852 (15 & 16 *Vict. c.* 85), *ss.* 22, 36.

The church trustees of the parish of St. Pancras were entitled to receive fees for burials in the old burial ground of the parish. This old burial ground was closed and a cemetery formed for the parish under the Burials Act, 1852, and a certain proportion of the burial fees was made payable to the church trustees by the burial board, who were the defendants to this action.

A railway company having taken part of an old burial ground belonging to another parish were bound to remove the soil and human remains and to deposit the same in some other place of interment, and made an agreement with the defendants under which the railway company were at their own cost to effect the reinterment in the defendants' cemetery, paying the defendants the sum of 1,000*l.* as compensation. This was done, the soil and human remains being deposited in an excavation made for the purpose. A few whole coffins were removed; but, in many cases, the human remains were undistinguishable.

This was an action by the church trustees, suing by their clerk, claiming a proportion of the 1,000*l.* so paid to the defendants.

Ince, Q.C., and *Vaughan Hawkins* for the plaintiff.

Renshaw, Q.C., and *Swinfen Eady* for the defendants.

KAY, J., said that it was not shown that the defendants had received any burial fees for which they were bound to account to the plaintiffs, and that the reinterment was not an interment for which the defendants could demand any fee from the railway company under the Burials Act, 1852, s. 36, but that, under section 22, the money ought to be paid to the overseers in aid of the rate for the relief of the poor in the parish; and dismissed the action.

Chancery Division.
KAY, J.
Feb. 19, 20, 21.

PATTEN *v.* BOND.

Trustee and 'Cestui que trust'—Payment off of Mortgage on Trust Estate by Third Person—Right to Lien—Subrogation—Right to follow Moneys being Trust Moneys.

The plaintiffs, the trustees of the Dixon settlement, applied part of their trust moneys in payment off of 600*l.*, part of a mortgage for 1,000*l.*, which was secured on real estate comprised in the Bond settlement. The plaintiffs took a mere receipt for the 600*l.* from the mortgagee, without any conveyance or declaration of trust, and the remaining 400*l.* remained on mortgage as before. The mortgagee at the time was threatening to sell, and the Court held that the plaintiffs paid the 600*l.* at the request of the tenant-for-life and the trustees of the Bond settlement, and that all parties had notice that the 600*l.* was part of the Dixon trust funds. The tenant-for-life of the Bond settlement died, having appointed the real estate to her two children, who then paid off the 400*l.* remaining due as aforesaid to the original mortgagee, and took a reconveyance of and claimed to hold the property discharged from the entire mortgage.

The Dixon trustees then brought this action, to which the surviving trustee of the Bond settlement and the two children were defendants, claiming to establish their right to a charge for 600*l.* on the property.

Ince, Q.C., and *Vernon Smith* for the plaintiffs.

Jelf, Q.C., and *Blakesley* for the defendants.

KAY, J., said there was no doubt that if the surviving trustee of the Bond settlement were the plaintiff, he would be entitled to the relief claimed; and the only question was, whether the plaintiffs were entitled to maintain the action. In his lordship's opinion they were so entitled—first, because, having advanced the moneys at the request of the Bond trustees, the doctrine of subrogation to the rights of those trustees applied; and secondly, because, even if the doctrine of subroga-

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tion did not apply, the money advanced being trust-moneys, and known to be so to the parties, the plaintiffs were entitled to follow them in any shape into which they could be traced. There must be an ordinary foreclosure decree in the plaintiffs' favour.

Chancery Division. Kay, J. Feb. 23. } *In re* The Criterion Gold Mining Company.

Company—Winding-up Petition—Dismissal of Petition—Compromise—Costs of other Parties appearing—Discretion of the Court.

A petition had been presented for the winding up of the company by creditors who had obtained judgment for their debt. The petitioner, however, agreed to a compromise with the company, under which he agreed to accept a security for his debt.

Beddall, for the petitioners, now asked leave to dismiss the petition.

Macaskie and *Leach*, for two contributories who had appeared to the petition with the intention of opposing it, asked that they might be allowed each a separate set of costs, citing *In re The Paper Bottle Company*, 58 Law J. Rep. Chanc. 82; L. R. 40 Chanc. Div. 52.

Kay, J., said that no hard-and-fast rule could be laid down in every case as to costs, which were a matter for the discretion of the Court in each individual case. If the Court in every such case as the present allowed costs to everyone who appeared, the effect would be to discourage compromises and to encourage litigation, whereas the Court desires the very opposite. The true rule was laid down in *In re The Peckham Tramways Company*, 57 Law J. Rep. Chanc. 462. In this case he should only allow one set of costs between the two contributories who had appeared quite independently of each other.

Chancery Division. Kay, J. Feb. 16, 18, 27. } Dreyfus Brothers & Co. *v.* The Peruvian Guano Company.

Foreign Tribunal—Practice—Discovery in aid of Proceedings before Foreign Court.

Motion.

Plaintiffs, who were carrying on proceedings against the defendants in a foreign Court, by their statement of claim asked discovery in aid of those proceedings.

Rigby, Q.C., and *Haldane* moved that the statement of claim be struck out, on the ground that this Court never granted discovery in aid of an inferior tribunal, which, for this purpose, a foreign tribunal must be deemed to be. The case of *Crowe* v. *Del Ris Vallego*, not reported, but referred to by Lord Redesdale in his book on 'Pleading,' was the sole authority in favour of the claim, which was contrary to the practice as recognised in *Bent* v. *Young*, 9 Sim. 180, and other cases.

Sir H. Davey, Q.C., and *Ingle Joyce*, for the plaintiffs, argued that *Crowe* v. *Del Ris* had never been overruled.

Kay, J., made an order in accordance with the notice of motion. The case of *Crowe* v. *Del Ris* was inconsistent with *Bent* v. *Young*; *Morris* v. *Morris*, 2 Ph. 205; *Paul* v. *Roy*, 15 Beav. 433, and other cases, and also with the settled practice of the Courts.

Chancery Division. Chitty, J. Feb. 23. } Robinson *v.* Galland.

Practice—Specific Performance—Conditional Judgment—Execution—Rules of Supreme Court, 1883, *Order XLII., rules* 3, 9.

This was an action for specific performance of a contract for the sale of real estate, in which judgment had been given for the plaintiff for specific performance of the contract, an account of what was due by the defendant, and payment by him of the amount on a day to be fixed by the judge in chambers, and for delivery thereupon of the deeds and conveyance by the plaintiff to the defendant.

The amount having been duly certified, and a time and place fixed, the plaintiff attended with the conveyance and deeds, but the defendant did not attend.

The plaintiff now moved for an order that the defendant should within four days pay the amount certified to be due from him into Court to the credit of the action, and that the plaintiff should thereupon hand to the defendant the deeds and conveyance.

Romer, Q.C., and *Fielding Nalder* for the plaintiff.

Byrne, Q.C., and *T. L. Wilkinson* for the defendant.

Chitty, J., said that such an order could not be made, as under a judgment directing payment to the plaintiff personally the plaintiff could not obtain an order for payment into Court, because the matter was completed. Where, however, the judgment was for payment by the defendant into Court, the plaintiff could obtain an order of a payment to himself, because in that case the matter was not completed by the original judgment. Execution might issue upon the judgment for payment, notwithstanding that the plaintiff had himself to perform part of the judgment and hand over the conveyance and deeds. The plaintiff was entitled to an order for payment by the defendant within seven days after service, and for delivery thereupon of the conveyance and deeds by the plaintiff to the defendant, so as to work out the original judgment.

Chancery Division. Chitty, J. Feb. 28. } *In re* Burgoyne's Trade-mark.

Trade-mark—Fancy Word—Invented Word—'Oomoo'—Patents, &c., Act, 1883, *s.* 64—*Patents, &c., Act*, 1888, *s.* 10.

This was an application originally made in December, 1887, for the registration of the word 'Oomoo' as a trade-mark for wines. The application was opposed *inter alia* on the grounds that 'Oomoo' was an adjective in the aboriginal language of Australia signifying 'choice,' and therefore not 'an invented word or a word having reference to the character or quality of the goods,' within section 10 of the Patents, &c., Act, 1888, or, if that enactment was not retrospective, that 'Oomoo' was not a 'fancy word' within section 64 of the Patents, &c., Act, 1883.

Romer, Q.C., and *Byrne, Q.C.*, for the parties.

Chitty, J., held that section 10 of the Act of 1888 was not retrospective as to proceedings commenced before January 1889, that was to say, the date of the commencement of the operation of that Act; and that, inasmuch as 'Oomoo' was a meaningless word in this

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country and other countries interested in the particular trade, it was registrable as a mark either under the Act of 1883 or the Act of 1888.

Chancery Division. Chitty, J. March 1. } *In re* The North Carolina Estate Company.

Company—Winding-up—Injunction—Stay of Proceedings—Foreign Action—Companies Act, 1862, *s.* 87.

The powers granted to the Court under section 87 of the Companies Act, 1862, of staying proceedings commenced after a winding-up order are not confined to staying proceedings in England, Scotland, and Ireland, but extend to proceedings in foreign countries by British subjects residing here.

Romer, Q.C., and *Butcher*; *Byrne, Q.C.*, and *Quin* for the parties.

Chancery Division. Chitty, J. March 2. } Knowles *v.* Dibbs.

Practice — Mortgagor and Mortgagee — Foreclosure — Bankrupt Mortgagor—Assessed Value—Subsequent Incumbrancers—Bankruptcy Act, 1883 (46 & 47 *Vict. c.* 52), *schedule* 2, *rules* 11, 12.

The minutes of a foreclosure judgment in an action in which the defendants are the official receivers in the bankruptcy and the subsequent incumbrancers, and the plaintiff is a first mortgagee who has assessed his security and proved for the balance, should show that the official receiver is entitled to redeem the security at the assessed value in priority to the subsequent incumbrancers.

O. L. Clare for the parties.

Chancery Division. North, J. Feb. 25. } *In re* Tennant.

Settled Land Act, 1882 (45 & 46 *Vict. c.* 38), *ss.* 21, 33 —*Settled Estates Act*, 1877 (40 & 41 *Vict. c.* 18), *s.* 34—*Investment of Proceeds of Sale of Settled Land.*

This was a motion to vary an order of North, J., in chambers, refusing a summons by the tenant-for-life under the will of C. E. Tennant, asking that certain Consols representing the purchase-money of lands settled by the will might, under the Settled Land Act, 1882, s. 21, be sold, and the proceeds invested in debenture stock of railway companies. The lands had been sold under an order of the Court dated February 15, 1878, by which trustees were appointed to receive the purchase-moneys and to apply the same after payment of incumbrances to some one or more of the purposes mentioned in section 34 of the Settled Estates Act, 1877, without any further application to the Court; and it was further thereby ordered that until such purchase-moneys could be so applied the trustees should invest them in Consols, and apply the dividends upon the trusts upon which the rents would have been applied. North, J., declined to make the order in chambers, as it involved an alteration of the previous order.

Kirby, for the motion, referred to *In re Mackenzie's Trusts*, L. R. 23 Chanc. Div. 750; and argued that as, under the order of 1878, the Consols were in effect money liable to be laid out in land, the case came within sections 21 and 33 of the Settled Land Act, 1882.

North, J., was of opinion that the trustees in whose names the Consols stood might act as proposed by the summons on the grounds stated in *In re Mackenzie's Trusts.*

Chancery Division. North, J. March 4. } King *v.* Dickeson.

Restrictive Covenants—Plaintiff Purchaser of a Particular Lot, forming part of a Building Estate—Defendants subsequent Purchasers of part of that Lot—Right to Sue.

The plaintiff in the year 1884 became the purchaser of Lot 258 of a building estate at Balham, which belonged to the British Land Company. In the conveyance to the plaintiff, after reciting that the premises were sold subject to the stipulations specified in the schedule thereto, 'the vendors (as to so much of the land to which the said stipulations relate as remains vested in them) for themselves and their assigns and the purchaser (as to the land hereby conveyed) for himself, his heirs, and assigns, do hereby respectively covenant with each other and as to the purchaser also with the owners or owner of any other land to which the benefit of the said stipulations is attached, that the covenantors respectively and their respective heirs or assigns will henceforth observe the said stipulations so far as the same relate either to the rights or to the duties of the purchaser, his heirs, or assigns in respect of the land hereby conveyed.' One of the stipulations was that nothing was to be erected within fifteen feet of the road except fences, and those not more than six feet high.

In April, 1879, the plaintiff entered into an agreement to mortgage part of Lot 258 to Messrs. Furber & Price. The agreement contained no reference to the restrictive covenant. Afterwards Messrs. Furber & Price brought a foreclosure action against the plaintiff; in November, 1883, they obtained an order declaring them entitled to the mortgaged property, free from the equity of redemption; and in December, 1883, obtained an order vesting the property in them.

The defendants were in possession of this part of Lot 258 under a building agreement from a Mrs. Ball, who had bought it from a purchaser from Messrs. Furber & Price.

It was admitted that the defendants, at the time of their taking possession, had notice of the original restrictive covenant.

The plaintiff now brought this action to restrain the defendants from building, on their part of Lot 258, beyond the building line fixed by the original restrictive covenant.

Higgins, Q.C., and *Eustace Smith* for the plaintiff.

Cozens-Hardy, Q.C., and *Chadwyck Healey*, for the defendants, were not called upon.

North, J., said that the question was whether the purchasers of a part of Lot 258, who were proposing to build beyond the building line, could be restrained from so doing, not by the owners of the other lots, but by the owner of the other part of Lot 258. It was contended that the mortgage of a part of Lot 258 created a new obligation in favour of the owner of the remainder of the lot. But, in his lordship's opinion, the mortgagees took the property subject to all then existing

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rights; and the owner of the remainder of the lot, not having created any such new obligation against his mortgagees of part of the lot, could not set it up against purchasers from them. The action must, therefore, be dismissed with costs.

Chancery Division. KEKEWICH, J. Feb. 23. } *Re* SALMON. PRIEST *v.* APPLEBY.

Trustee—Investment—Liability—Notice to Trustee before Realisation of Security.

The plaintiff, as assignee of a beneficiary under a will, claimed to make the defendant Appleby liable for a loss incurred on the realisation of an investment on freehold security made by Appleby while sole trustee of the will. It was alleged, and assumed for the purposes of the judgment, that the investment was improper. It appeared that, after the investment was made, Appleby retired from the trust, two new trustees being appointed by him. They realised the security with the concurrence of the plaintiff, but without notice to Appleby.

S. Hall, Q.C., and *P. S. Stokes*; *Warmington, Q.C.*, and *J. G. Wood*; and *Neville, Q.C.*, and *Decimus Sturges* for the various parties.

KEKEWICH, J., held that Appleby ought to have had an opportunity of taking over the security, whereby he would have made the realisation unnecessary, and that as against the plaintiff he was not liable for the loss.

Queen's Bench Division. (Magistrates' Case.) Feb. 8. } REGINA *v.* THE TREASURER OF KENT.

Practice—Police Magistrate—Human Body cast Ashore—Interment—Order for Expenses of—Form—Order Bad on face of it—Jurisdiction—48 Geo. III. c. 75, s. 6—49 Vict. c. 20.

This was a rule *nisi* calling on the Treasurer of Kent to show cause why a writ of *mandamus* should not issue commanding him to pay the churchwardens and overseers of the parish of Woolwich the several sum of 1*l.* 5*s.*, respectively mentioned in several orders made by one of the magistrates of the Metropolitan Police Court, being payments in respect of costs and expenses incurred by virtue of 48 Geo. III. c. 75, as amended by 49 Vict. c. 20. The magistrates' order was as follows: 'Having inquired into and ascertained on oath the payments, costs, and expenses, amounting to 1*l.* 5*s.*, incurred by the churchwardens and overseers of the poor of the parish of Woolwich . . . . by reason of a dead human body having been found in the river Thames within the aforesaid parish, and where the tide ebbs and flows, and brought on to the shore thereof within the aforesaid parish, . . . (I) do hereby order you forthwith, on sight hereof, to pay unto W. W., W. F. L., S. C., L. F. W., D. M., and J. C., churchwardens and overseers, &c., the said sum of 1*l.* 5*s.*, according to the Act passed 48 Geo. III., as amended by 49 Vict. c. 20; and the same shall be allowed to you in your accounts.'

Meadows White, Q.C., and *Herbert Russell* showed cause.

Channell, Q.C., and *Forman* in support of the rule.

The COURT (DENMAN, J., and HAWKINS, J.) held that the case must be decided on the preliminary point whether or not the order was bad on the face of it, and that it was clearly bad. The latter part amounted to nothing, and was clearly insufficient; nor did the order state that the payment was to be made for any specific act done, nor that the expenses incurred were within the meaning of the Acts of Parliament, or were necessary and proper charges and expenses.

Rule discharged.

Queen's Bench Division. Jan. 25, 30. *Court of Appeal.* Feb. 13. } BROWN AND WIFE *v.* THE EASTERN AND MIDLANDS RAILWAY COMPANY.

Nuisance—Public Highway—Heap of Rubbish by Roadside—Horse Shying—Injuries Caused—Public Nuisance—Evidence.

The plaintiff's horse shied at a heap of road scrapings placed by the side of a public highway by the defendants, and personal injuries were in consequence sustained by the plaintiff's wife. Upon the trial of an action brought in respect of such injuries, evidence that other horses had shied at the same heap on the same day was rejected, and judgment of nonsuit entered.

Philbrick, Q.C., and *Poyser* for the plaintiffs.

Kemp, Q.C., and *G. H. Haigh* for the defendants.

The COURT (DENMAN, J., and STEPHEN, J.) held, upon motion for new trial, that such evidence was admissible; for, if the heap was of such a nature as to be likely to cause horses to shy, it was a public nuisance, and, accordingly, whatever showed it to be likely to cause horses to shy was evidence for the plaintiff.

The defendant appealed.

The Court of Appeal on February 13 dismissed the appeal.

Probate, Divorce, and Admiralty Division. Feb. 25. } TRELOAR *v.* LEAN AND OTHERS.

Will—Portions Missing—Presumption of Destruction 'animo revocandi'—Other Sheets Substituted—Total or Partial Revocation.

Action for probate of will in solemn form.

The testator in this case died April 19, 1888. After his death a paper was found, of which the front sheet was the last sheet of a duly executed will dated August 21, 1878. The sheet next behind that was the last sheet but one of the same will. Then followed three sheets in reverse order, all of which were in the handwriting of the deceased. The will of August 21, 1878, was not in testator's handwriting, but was signed by him and by the attesting witnesses on each sheet. The three substituted sheets were all signed by the deceased in the same manner as those they had replaced. There had been no re-execution of either of the two sheets remaining from the will of 1878, neither had the three fresh sheets been attested. The envelope in which the document was found was indorsed in the handwriting of the deceased, 'My will. Wm. Treloar, March 2, 1882.'

C. A. Middleton for the plaintiff.

Bargrave Deane for the defendants.

BUTT, J., held that the testator's intention was clearly to preserve parts of the will of 1878, with a view to make them parts of another will that was never executed.

Probate refused.

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Table of Cases.

HOUSE OF LORDS.

House of Lords. March 14, 18. } HUXLEY (PAUPER) *v.* THE WEST LONDON EXTENSION RAILWAY COMPANY.

Practice—Costs—Trial with Jury—'Good cause'—Refusal of Judge to make Order as to Costs—Appeal—Subsequent Order by Judge depriving Successful Party of Costs—'Res judicata'—Order LXV., rule 1.

This was an appeal from a decision of the Court of Appeal, affirming an order of LORD COLERIDGE, C.J., by which the appellant was deprived of the costs of an action tried with a jury, in which he had recovered 50*l.* damages against the respondents. The judgment of Lord Coleridge is reported 55 Law J. Rep. Q. B. 506.

F. O. Crump, Q.C., and *W. Lynden Bell* for the appellant.

Murphy, Q.C., and *W. Wightman Wood*, for the respondents, were not called upon.

Their LORDSHIPS (LORD HALSBURY, L.C., LORD WATSON, LORD BRAMWELL, LORD FITZGERALD, LORD HERSCHELL, and LORD MACNAGHTEN) dismissed the appeal.

COURT OF APPEAL.

Court of Appeal. COTTON, L.J. LINDLEY, L.J. LOPES, L.J. March 15, 16, 18. } BOLTON AND PARTNERS (LIM.) *v.* LAMBERT.

Contract—Principal and Agent—Contract by Unauthorised Agent to Sell—Repudiation by Purchaser—Subsequent Ratification by Principal.

Where a contract has been entered into by one as agent, although without his principal's authority, the principal may ratify and enforce the contract, notwithstanding that the other party thereto has in the meantime repudiated it.

Seward Brice, Q.C., and *Theodore Ribton* for the appellant.

Warmington, Q.C., and *Chadwyck Healey* for the respondents.

Decision of KEKEWICH, J., affirmed.

Court of Appeal. LORD ESHER, M.R. BOWEN, L.J. FRY, L.J. Feb. 7. March 18. } PRICE & Co. *v.* THE "A 1" SHIPS' SMALL DAMAGE INSURANCE COMPANY.

Marine Insurance—Average—General Average—'Warranted free from average under 3 *per cent., unless general, or the ship is stranded, sunk, or burnt.'*

Appeal by defendants from a judgment of CAVE, J., on further consideration (reported 57 Law J. Rep. Q. B. 459), holding that under a policy of insurance covering all losses not recoverable under a policy of insurance containing the clause 'warranted free from average under 3 per cent., unless general, or the ship is stranded, sunk, or burnt,' the insured are entitled to recover where the particular average loss is less than 3 per cent., although, if added to the general average loss, it would be more than 3 per cent. if the ship be not stranded, sunk, or burnt.

French, Q.C., and *Carver* for the defendants.

Gorell Barnes, Q.C., and *Hill* for the plaintiffs.

Their LORDSHIPS dismissed the appeal, being of

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opinion that the general average loss and the particular average loss could not be added together to bring the loss above the 3 per cent. in the warranty clause.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
LOPES, L.J.
March 18.
In re RAY.

Lunatic—Surplus Income—Allowances to Collaterals.

Adjourned certificate.

H. R. R., a lunatic, was entitled as tenant-for-life to certain settled estates of the value of 6,000*l.* a year and to personal property of the value of 1,000*l.* a year. After providing for the maintenance of the lunatic and for certain allowances sanctioned by the Court, there remained a surplus income of 4,000*l.* a year, and the accumulations of income in Court amounted to over 40,000*l.* While of sound mind the lunatic made allowances to his brothers Henry and Alfred of 250*l.* and 300*l.* a year respectively, and these allowances had been continued since the lunacy by order of the Court.

This was an application by Alfred, who was the committee of the lunatic's estate, and the person next entitled to the settled property, that the following allowances should be made out of the lunatic's surplus income: to himself 300*l.* per annum in addition to his present allowance; to Henry 150*l.* per annum in addition; to Gertrude Hunt, sister of the lunatic, 200*l.* per annum; to Arthur, another brother, 300*l.* per annum. The grounds upon which Alfred based his claim were that he was the person next entitled, and that he had recently suffered a diminution of income through accidental circumstances. Henry's claim was not supported by any special circumstances, and it appeared that he had never made any attempt to earn a livelihood for himself.

Mrs. Hunt stated in an affidavit that the lunatic had always been well disposed towards her, and had on one occasion presented her with 300*l.*, and that her income had been reduced from 900*l.* to 300*l.* a year in consequence of her husband's misconduct.

Arthur, it appeared from the certificate, had endeavoured to earn a living in America by farming, but had failed, from no fault of his own, and he was in great destitution.

The lunatic had other sisters who were well provided for. They did not oppose the application.

Crackanthorpe, Q.C., and *Borthwick* for the committee.

Romer, Q.C., and *Levett*, for the other brothers and the above-named sister of the lunatic, supported the application.

COTTON, L.J., said that the Court was always unwilling to grant allowances to collaterals out of the lunatic's surplus income. This practice often did more harm than good, as it encouraged the lunatic's relations to think that they need not do anything for themselves. Under the circumstances the proposed allowances ought to be sanctioned, except in the case of Henry. As he had not made any attempt to earn a livelihood, there was no ground for increasing his allowance.

LINDLEY, L.J., and LOPES, L.J., concurred.

HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
Feb. 21, 25.
BATCHELOR *v.* BIGGER.

Landlord and Tenant—Agreement to Pay Rates, &c.—Owner's Proportion of Paving Road—Metropolis Local Management Act, 1862 (25 & 26 *Vict. c.* 102), *s.* 96.

Special case.

In an agreement for a lease by the plaintiff to the defendant, the defendant agreed to pay 'all sewers rate, tithe rent-charge, land-tax (if any), and all existing and future taxes, rates, assessments, and outgoings of every description payable by landlord or tenant in respect of the premises during the tenancy, except the landlord's property-tax.' The term was for three years, commencing in June, 1886, at a yearly rent of 75*l.*; and in April, 1888, a sum of 68*l.* 15*s.* 11*d.* was apportioned in respect of the premises by the local authority under the Metropolis Local Management Act, 1862, s. 96, for expenses of paving a road on which the premises abutted.

The question was whether this sum was payable by the defendant under the terms of the agreement.

Swinfen Eady and *Eve* for the plaintiff.

Millar, Q.C., and *E. K. Corrie* for the defendant.

KAY, J., held that under the terms of the agreement the sum was payable by the defendant, following *Crosse* v. *Raw*, 43 Law J. Rep. Exch. 144; L. R. 9 Exch. 209, and *Aldridge* v. *Fearne*, 55 Law J. Rep. Q. B. 587; L. R. 17 Q. B. Div. 212.

Chancery Division.
NORTH, J.
March 6.
In re BROWN.
BROWN *v.* BROWN.

Will—Construction—Substitutionary Gift to Issue of their Parent's Share—Death of Parent before Date of Will—Illegitimacy.

Hannah Brown, spinster, by her will bequeathed her residuary personal estate 'unto and equally between all my nephews and nieces living at my death; provided that if any of my said nephews and nieces shall die in my lifetime leaving lawful issue such issue shall take his or her or their respective parents' share or shares equally.' In an earlier part of the will the testatrix had given a legacy of 50*l.* 'to my niece Hannah Outen.' The testatrix left seventeen nephews and nieces living at her death. None had been born or had died between the dates of the will and death, but at the date of the death there were living five children of nephews and nieces who were already dead at the date of the will. Hannah Outen was an illegitimate child of a sister of the testatrix, and this fact was known to the testatrix.

This was an adjourned summons, by which questions arising on the will were submitted for the determination of the Court.

Sebastian, for the plaintiff, one of the seventeen nephews and nieces, who was appointed to represent the class.

Stallard for one of the children of deceased nephews and nieces.

Normandy for the remainder of such children.

Cozens-Hardy, Q.C., and *Stokes* for Mrs. Outen.

Blagg for the trustees.

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NORTH, J., held that neither (1) the children of nephews and nieces dead at the date of the will, nor (2) Mrs. Outen were entitled to any share in the testatrix's residuary personal estate.

Chancery Division. KEKEWICH, J. March 13. } GLASIER *v.* ROLLS.

Company—Prospectus—Promoter—Deceit—Vendor accepting Directorship after Allotment.

The plaintiff, who had subscribed for shares in Rolls & Sons (Lim.) upon the faith of a prospectus issued by the company, sought to make the defendant liable for alleged misrepresentations in the prospectus respecting the position and profits of a manufacturing business acquired by the company. The defendant had been the principal partner in the business, and the prospectus stated that he would join the board and take the position of chairman after allotment. He did not see the draft of the prospectus in question before its issue, but he saw earlier drafts, and he supplied the information necessary for framing the prospectus. The sale to the company was carried out through the Universal Contract Corporation as intermediary, and the defendant took a large share of the purchase-money.

The case was argued upon the legal question of liability before the issues of fact as to the truth of the statements in the prospectus were tried.

Warmington, Q.C., and *Solomon* for the plaintiff.

Moulton, Q.C., and *Muir Mackenzie* for the respondent.

KEKEWICH, J., held that the defendant was liable for the statements in the prospectus, and, after hearing the evidence, that the statements were untrue in fact. Judgment was given for the plaintiff for damages to be ascertained on an inquiry.

Queen's Bench Division. March 6, 7. } FARDEN *v.* RICHTER.

Practice—Time—Defence Struck Out unless Affidavit Filed within Three Days—Service of Order—Order LII., rule 13.

This was an appeal from an order of the learned judge at chambers setting aside a judgment.

On January 17, 1889, plaintiff served defendant with interrogatories for his examination. These the defendant did not answer, nor did he make any application for further time. The plaintiff then issued a summons, returnable on February 5, asking that the defence be struck out and judgment signed for possession of the premises in dispute, for arrears of rent, mesne profits, and costs. Upon this summons the master ordered that, if the defendant did not within three days file an affidavit in answer to the interrogatories, his defence should be struck out and judgment signed. No affidavit was filed, and no application was made for time by the defendant, and on February 9 the order was drawn up and judgment signed upon the usual official certificate that, up to that time, no such affidavit had been filed. On the same day a copy of the said order was served on the defendant, and on February 12 a writ of possession and of *fieri facias* was lodged with the sheriff, who entered and took possession. On February 18 the defendant issued a summons to set aside the judgment on the ground that he had complied with the order of February 5. His affidavit in support, however, did not state any merits nor show that he had a meritorious defence, but that the order of the 5th was not served till February 9, and that his affidavit in answer to the interrogatories had been filed on February 11. On February 22 the master held that the three days' time for filing the affidavit ran from February 9, when the order to sign judgment was drawn up and served, and not from February 5, when it was made, and set aside the judgment as irregular; and on the following day this order was confirmed by the learned judge in chambers.

Crump, Q.C., and *Ashton Cross* for the plaintiff (the appellant).

Crispe for the defendant (the respondent).

Rose-Innes for the sheriff.

The COURT (HUDDLESTON, B., and MANISTY, J.) held that the appeal must be allowed and judgment restored. It was not necessary for the plaintiff to serve the order of February 5 before signing judgment (*Hopton* v. *Robertson*, Bittleston's 'Chamber Reports,' 203).

Appeal allowed.

Queen's Bench Division. March 8, 9, 11. } COHEN *v.* KITTELL.

Gaming and Wagering—Turf Commission Agent—Contract with Customer to make Bets with Third Parties Void—Gaming Act (8 & 9 *Vict. c.* 109), *s.* 18.

This was an appeal from the Mayor's Court, and the question was whether a turf commission agent was legally bound to make the bets his customer had instructed him to make; and whether, if he failed to make such bets, he was liable in damages. It appeared that the defendant had not executed a number of orders sent by telegram. The plaintiff sued (1) for money had and received to his use, and (2) alternatively, as and by way of damages, for breach of duty and contract in not making the bets, whereby he had been deprived of moneys which would have become due to him in respect of winnings. At the trial in the Mayor's Court the first count was abandoned, as the bets had not been made; and the assistant-judge, reserving the point as to whether or not the action upon the second count could be maintained, left the case to the jury, who returned a verdict for the plaintiff for 27*l.* 13*s.* 6*d.*, the full amount claimed, less defendant's commission. Leave to appeal was granted on the grounds (1) that the action was not maintainable, being founded on the breach of an alleged contract with the defendant to make bets with other persons, which would be void; (2) that in no event could damages other than nominal damages be recovered.

Candy, Q.C., and *Herbert Reed* for the appellant (the defendant).

Wildey Wright and *M'Cullagh* for the respondent (the plaintiff).

The COURT (HUDDLESTON, B., and MANISTY, J.) held the defendant was entitled to judgment. If the defendant had won the bets and received the money he would have been liable (*Beeston* v. *Beeston*, 45 Law J. Rep. Exch. 230; L. R. 1 Exch. Div. 13; *Bridger* v. *Savage*, 54 Law J. Rep. Q. B. 464; L. R. 15 Q. B. Div. 363). Again, if the defendant had lost the bets and paid them, he would have been entitled to recover the

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money so paid from the plaintiff (*Read* v. *Anderson*, 53 Law J. Rep. Q. B. 532; L. R. 13 Q. B. Div. 779). But if the defendant had made and won the bets, and had not been paid, he could not have recovered them, either for himself or for the plaintiff, from the person with whom they were made, because of section 18 of the Gaming Act (8 & 9 Vict. c. 109). The contract in the present case was to make bets or contracts which would be void, and no action could be maintained upon it. Accordingly, the action not being maintainable, the appeal must be allowed.

Judgment for defendant.

Probate, Divorce, and Admiralty Division. Feb. 26. } IN THE GOODS OF CAROLINE SHEPHERD.

Administration to Creditor—Intestacy—Probate Rules, rule 70—*Advertisement.*

By rule 70 of the Rules of the Probate Registry for non-contentious business 'citations and other instruments which cannot be personally served are to be served by the insertion of the same, or of an abstract thereof, settled and signed by one of the registrars,' as an advertisement in such papers as he may direct.

Caroline Shepherd died intestate, a widow, without any known next-of-kin.

On December 12, 1888, Gask & Co., of 122 Oxford Street, as creditors of the deceased, extracted a citation from the principal registry against all persons having, or pretending to have, any interest in the estate of the said deceased, calling upon them to accept or refuse letters of administration.

In accordance with rule 70, an abstract of this citation was duly signed by the registrar. When advertised, however, in the newspaper, the registrar's signature was omitted and that of the applicant's solicitor substituted for it.

Newson now moved for a grant of administration to Gask & Co., no one having appeared in answer to the advertisement.

BUTT, J., granted the application, although the citation had not been properly advertised as directed by the rule.

Administration granted.

Probate, Divorce, and Admiralty Division. Feb. 28. } CHARTER *v.* CHARTER.

Wife's Petition—Date of Charge of Adultery wrongly stated in Petition—Leave to Amend—Re-service.

In an undefended case the adultery charged in the petition was alleged to have taken place on November 17, 1888, whereas the evidence proposed to be given related to an act of adultery alleged to have been committed on September 17, 1888.

Sydenham Jones, for the petitioner, applied for leave to amend.

BUTT, J., granted the application, but ordered the petition to be re-served.

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Table of Cases.

COURT OF APPEAL.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
BOWEN, L.J.
March 25.

In re BLACK.

Lunatic—Past Maintenance—Lunacy Regulation Act, 1862.

S. B., a lunatic, was, at the date of these proceedings, and had been since April, 1880, maintained in the Joint Counties Asylum, at Abergavenny, at the expense of the petitioners, the guardians of the Pontypool Union.

In 1884 the lunatic became entitled to a legacy of 500*l.*

By an order of March 2, 1887, made in the lunacy, it was ordered that Mrs. Waddington, in whose hands the legacy was, should be at liberty to pay the balance of the legacy into Court after deducting a sum for costs, and should be at liberty, out of the dividends then accrued, to pay the guardians of the Pontypool Union a sum of 35*l.* for the past maintenance of the lunatic, and that the future dividends should be paid to Mrs. Waddington and H. S. Gustard for the maintenance of the lunatic.

The sum of 35*l.* represented the cost of the maintenance of the lunatic from April, 1880, to November, 1886, after deducting a sum of 69*l.*, which was returned to the guardians by the Local Government Board out of the grant in aid of pauper lunatics, and after deducting a further sum paid on behalf of the lunatic on her entrance into the asylum.

This was a petition of the guardians praying that a sum of 110*l.* might be paid out of the money in Court for the maintenance of the lunatic and for legal expenses. This sum included the sum of 69*l.* paid by the Local Government Board to the guardians.

Ryland, for the petition, relied upon *In re Gibson*, L. R. 7 Chanc. 52.

Maidlow, for Mrs. Waddington and H. S. Gustard, contended that the petitioners were precluded by the order of March 2, 1887, from claiming the 69*l.*

Their LORDSHIPS refused to order the payment of the 69*l.* on the ground that there was no implied contract that the sum paid by the Local Government Board should be refunded.

Solicitors: Le Brasseur & Oakley (agents for Edwards & Le Brasseur, Pontypool), for petitioners; Tatham, Oblein & Nash (agents for H. S. Gustard, Usk), for respondents.

HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
March 21.

In re WILLETT & ARGENTI.

Vendor and Purchaser—Expenses of Production of Deeds in Possession of Vendor's Mortgagees—Contrary Intention—Conveyancing and Law of Property Act, 1881 (44 & 45 *Vict. c.* 41), *s.* 3, *subs.* 6, 9.

The expenses of the production and inspection of abstracted deeds and documents in the possession of the vendor's mortgagees for the verification of the abstract, must be borne by the purchaser under the Conveyancing Act, 1881, s. 3, subs. 6; and the fact that by the contract of sale the vendor has contracted to sell 'the fee-simple in possession free from incumbrances,'

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does not imply a contrary intention within subsection 9, so as to throw such expenses on the vendor.

Cyprian Williams and *Frederic Thompson* for the parties.

Solicitors: Robson & Seatle, for the vendor; Janson, Cobb, Pearson & Co., for the purchaser.

Chancery Division. Kay, J. March 23. } *In re* The United Club and Hotel Company.

Apportionment Act, 1870 (33 & 34 *Vict. c.* 35), *ss.* 2, 3—*Landlord and Tenant—Rent—Company—Winding-up Petition—Companies Act*, 1862, *s.* 82.

Petition.

A petition was presented for the winding up of the company by the landlord in respect of the rent of the premises accrued since Christmas, 1888.

Ince, Q.C., and *Alexander Young*, for the petition: By virtue of the Apportionment Act, ss. 2, 3, the rent becomes due *de die in diem*, and the petitioner is entitled to ask for a winding-up order in respect of rent for the unexpired portion of the quarter. There is a debt now due to the petitioner, though it is only payable *in futuro*.

Marten, Q.C., *Haldane*, and *Theobald*, for parties opposing, were not called on.

Kay, J., dismissed the petition, with costs. The Apportionment Act did not alter the date at which rent was due, but was passed for the purpose of equitably distributing accruing rent or interest between different parties entitled in consequence of death, assignment, or other devolution of interest.

Solicitors: Last & Sons; C. & S. Harrison & Co.; Frere, Foster & Co.

Chancery Division. Chitty, J. March 21. } *In re* W. Roper. Morrell *v.* Gissing.

Will—Construction—'Survivor.'

A testator, who died in 1840, directed his personal estate to be converted, and invested in Consols, sufficient to provide life annuities to a specified amount for his wife and his four children, George, Jane, William, and Robert. Upon the death of his wife her annuity was to be distributed among his said four children for their lives, and 'upon the decease of either of his said children' the testator bequeathed one-fourth part of the said fund of Consols to the children or child of such deceased child absolutely, and continued: 'And in the event of either of my said children dying without issue I give and bequeath the fourth part or share to which the children of such dying would have been entitled unto the survivors of my said children in equal shares.'

The will contained a residuary gift.

George, the last survivor of the testator's four children, having died without issue, the question now raised was whether the *corpus* of his one-fourth belonged to his representatives or passed under the residuary gift.

Maclean, Q.C., and *P. B. Abraham* for the plaintiffs, the executors of George.

Whitehorne, Q.C., and *Simmonds* for defendants who represented residuary legatees.

Romer, Q.C., and *J. H. Redman* for other defendants.

Methold for the trustees.

Chitty, J., held, following *Maden* v. *Taylor*, 45 Law J. Rep. Chanc. 569, and *Davidson* v. *Kimpton*, L. R. 18 Chanc. Div. 213, in preference to *Re Mortimer; Griffiths* v. *Mortimer*, 54 Law J. Rep. Chanc. 414, and *Askew* v. *Askew*, 57 Law J. Rep. Chanc. 629, that George, as the longest liver, became absolutely entitled on his death without issue to the *corpus* of his one-fourth share of Consols, and consequently that it now belonged to his representatives.

Solicitors: Dubois, Reid, & Williams; Child & Norton.

Chancery Division. Chitty, J. March 22. } Devas *v.* The East and West India Dock Company.

Railway Companies Act, 1867, *ss.* 7, 9, 15—*Scheme of Arrangement—Stay of Proceedings.*

This was a motion by the defendant company, under section 9 of the Railway Companies Act, 1867, to stay proceedings in the above action, a scheme of arrangement under the Act having been filed and duly advertised. The plaintiff, who had obtained judgment for a debt against the company in the Queen's Bench Division, had, prior to the filing of the scheme, served notice of motion for leave to issue equitable execution.

Motions were also made by the defendant company to restrain proceedings in other actions by judgment creditors. The plaintiff submitted that, as his motion was pending before the scheme was filed, his position was different from that occupied by the other respondents.

Latham, Q.C., and *Howard Wright*; *Romer, Q.C.*, *Finlay, Q.C.*, *Kenyon Parker*, *Kirby*, and *Arbuthnot* for the parties.

Chitty, J., said that, as at the date of filing the scheme the plaintiff had neither issued execution nor obtained leave to execute it, he was in no better position than the other creditors, whose actions the company sought to stay. He should therefore make the same order as was made in *In re The Devon and Somerset Railway Company*, 37 Law J. Rep. Chanc. 914; L. R. 6 Eq. 610. The costs of the various respondents would be added to their debts.

Solicitors: Freshfields & Williams; Woodhouse, Trower, Freeling & Parkin; Irvine & Hodges.

Chancery Division. Chitty, J. March 27. } *Re* Cawley & Co. (Lim.).

Company—Registration of Transfer—Board Meeting—Order of Business.

In this case a motion was made by a shareholder, who had executed a transfer of his shares, for a declaration that the transfer should have been registered before the making of a call and for rectification of the register accordingly. It appeared that the transfer was executed on December 15, and was lodged at the company's offices for registration on the morning of December 18. On the afternoon of the same day a directors'

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meeting was held, and, after a resolution was passed calling up the unpaid capital of the company, the directors proceeded to take the business of registering divers transfers that had been presented, including that by the applicant.

Romer, Q.C., and *Maidlow* for the applicant.

Maclean, Q.C., and *C. B. M'Laren* for the company.

CHITTY, J., said that the directors were entitled to transact the business of the meeting in the order they thought fit. The registration of a transfer was not a merely ministerial act on the part of the company's officers, but was a fiduciary power exercisable by its directors in the general interest of the company. In the absence of *mala fides*, the Court had no right to interfere. The motion was dismissed, with costs.

Solicitors: Lickorish & Bellord; Blewitt & Tyler.

Chancery Division. NORTH, J. March 19. — *Re* BRACKEN. DOUGHTY *v.* TOWNSON.

Liability of Executors—Distribution of Assets under Lord St. Leonards' Act (22 & 23 *Vict. c.* 35), *s.* 29—*Advertisements for Creditors and Claimants.*

Action.

John Bracken, who died in the year 1825, by his will devised one-fourth part or share of an estate at M. in Yorkshire, to which he was entitled, to trustees, upon trust after the death of his wife to sell and to divide the proceeds between his two daughters; but in case either of them should die before the fund was distributable, he willed that their issue should take their parents' share. In 1848 John Chapman (who was the surviving executor and trustee of John Bracken's will) joined with the owners of the remaining three-fourths in selling the estate, and received the purchase-money in respect of John Bracken's one-fourth share, which he handed over to a solicitor to be distributed among the parties interested under the will.

The plaintiff in the present action (who was a great-granddaughter of John Bracken) claimed to be interested in the proceeds of sale, but no part thereof had ever been paid to her. She, therefore, brought this action against the surviving executor of John Chapman (who died in 1875, and whose estate had long since been distributed) to enforce her claim. The defendant, in his defence, pleaded that he and his co-executors had, before distributing John Chapman's estate, issued proper advertisements for creditors under Lord St. Leonards' Act and the judge in chambers ordered the question of the sufficiency of the advertisements to be set down for trial as a preliminary point of law. It appeared that advertisements had been issued in the Lancashire local papers circulating in the district where John Chapman had lived for many years prior to his death, and also in the *London Gazette*. But no advertisements had ever been issued in a London daily paper.

The plaintiff had, since 1848, until a short time before the commencement of the present action, resided in New York.

F. Hoare Colt for the plaintiff.

Joseph Gatey for the defendant.

NORTH J., said that the advertisements in the present case were in accordance with the practice of the Court under similar circumstances, and they were, in his opinion, sufficient to exonerate the executors. The objection was founded on a technical rule, and there was no general rule that in all cases advertisements must be issued in a London daily paper; whether that ought to be done or not depended on the facts of each particular case.

Solicitors: Warriner & Kinch (agents for Mole & Stone, Derby) for the plaintiff; Tahourdins & Hargreaves (agents for Johnson & Tilley, Lancaster) for the defendant.

Chancery Division. NORTH, J. March 26. — MARSHALL *v.* THE SCARBOROUGH AND WHITBY RAILWAY COMPANY.

Railway Company—Unpaid Vendor—Action to Enforce Lien—Form of Order.

Action.

This was an action by an unpaid vendor of land taken by a railway company to enforce his lien. The amount of the purchase-money had been fixed by arbitration at 856*l.* 5*s.* The company had accepted the vendor's title and had entered into possession of the land. They had also paid to the vendor the sum of 500*l.* on account of the purchase-money. The vendor, being unable to obtain payment of the balance of the purchase-money, brought this action, in which he asked for a declaration establishing his lien for the unpaid purchase-money, and, in default of payment, possession of the land and an injunction restraining the company from running trains over the railway. The principal question discussed was as to the form of order.

Cozens-Hardy, Q.C., and *Oswald* for the plaintiff.

Napier Higgins, Q.C., and *Eastwick* for the defendants.

Hamlyn for another party.

NORTH, J., declined at the present stage either to direct a sale or to grant an injunction. His lordship made a declaration that the vendor was entitled to a lien for his unpaid purchase-money with interest thereon at 4 per cent. per annum from the time when the company took possession, with liberty to apply in chambers to enforce such lien, in default of payment within a month.

Solicitors: John Hill for the plaintiff; Deacon, Gibson & Medcalf (agents for Turnbull, Graham & Moody, Scarborough) for the defendants.

Chancery Division. STIRLING, J. March 26. — *In re* KENNAWAY.

Practice—Trustees—Appointment by Court for purposes of Settled Land Acts—Stamp Act, 1870—*Adjudication by Commissioners.*

By an order dated March 6, 1889, upon the application of the tenant-for-life under a settlement, trustees were appointed for the purposes of the Settled Land Acts. There had not previously been any trustees of the settlement for the purposes of the Acts. The registrar refused to pass and enter the order unless it

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was stamped with a 10*s.* stamp under the Stamp Act, 1870. This was an *ex parte* application by the tenant-for-life for a direction to the registrar to pass and enter the order.

Geare, for the applicant, submitted that the 10*s.* stamp was only payable on the appointment of new trustees, and not on an appointment of trustees for the purposes of the Settled Land Acts, where there have not previously been any trustees for the purposes of those Acts. He referred to *In re Potter*, a similar case before North, J., in which the order had been taken to Somerset House, and the commissioners had adjudicated that no stamp duty was required, and stamped the order to that effect. In that case the learned judge had held that the order must be passed.

STIRLING, J., however, declined to give any direction to the registrar, and suggested that the order in the present case should be adjudicated upon.

Solicitors: Geare, Son & Pease (agents for Buckingham & Son), Exeter.

Chancery Division. KEKEWICH, J. March 29. } *Re* BENNISON. CUTLER *v.* BOYD.

Executor—Liability for Fraud of Co-Executor—Legacy of Stock—Payment by Cheque—Forgery.

A testatrix bequeathed to the plaintiff a legacy of 500*l.* Consols. At the time of her death she had a general power of appointment over one sum of Consols, and a smaller sum of like stock was standing in her own name. The larger sum was converted by the trustees of a settlement, in whose name it was standing, and the proceeds were paid to the executors of the testatrix. The defendant, who was one of the executors, subsequently signed an authority for the sale of the other sum of stock on the representation of his co-executor, who acted as solicitor in the administration, that it was required for payment of legacies. The defendant then joined his co-executor in signing a cheque for the nominal amount of the plaintiff's legacy, and crossed to his order. The co-executor undertook to forward the cheque to the plaintiff, but, in fact, forged an indorsement of his name and obtained payment of the proceeds. The plaintiff was never asked whether he would take his legacy in cash, and on his pressing for payment it was found that the co-executor had embezzled the whole remaining estate and had absconded.

Warmington, Q.C., and *Waggett* for the plaintiff.

Neville, Q.C., and *Vernon Smith* for the defendant.

KEKEWICH, J., held that the defendant was liable to pay the plaintiff's legacy.

Solicitors: Van Sandau & Co.; Cowland & Chowne.

Queen's Bench Division. April 3. } JAMES *v.* JAMES AND ANOTHER.

Solicitor—Goodwill, Sale of—Deeds belonging to Client—Arbitration—Mistake of Arbitrator—Revocation of Submission—Discretion of Court.

Rule *nisi* to revoke a submission to arbitration.

The plaintiff, as the executrix of a deceased solicitor, agreed to assign his business to the defendants upon the terms that they, as partners, were to take over the business premises and, at the expiration of the first year, the office furniture and books—as to the latter, at a valuation. It was further agreed that no charge was to be made by the executrix for the goodwill of the business. Under this agreement the defendants entered upon the business premises where certain deeds and papers, the property of clients of the deceased solicitor, were stored. The plaintiff brought an action of detinue to recover these documents, and the action was referred to arbitration by a master, power being reserved to the arbitrator to deal with the question of liability before considering the question of damages; the arbitrator intimating an opinion that the right to the custody of the clients' documents did not pass with the goodwill of the business to the defendants, they obtained a rule *nisi* to revoke their submission to arbitration.

Gore and *Davies* showed cause.

A. T. Lawrance and *T. Terrell* in support of the rule.

The COURT (DENMAN, J., and STEPHEN, J.) held that the right to the custody of the clients' deeds and papers did not pass to the defendants under the agreement, and that the Court will not, except under very exceptional circumstances, revoke a submission to arbitration.

Probate, Divorce, and Admiralty Division. April 2. } B. *v.* B.

Practice—Summons to Dismiss Petition—No Ground for Dissolution of Marriage Disclosed.

Demurrer.

This was a summons to dismiss a petition for dissolution of marriage (or judicial separation in the alternative) by reason that it disclosed no ground for either form of relief.

Inderwick, Q.C., for the petitioner.

Searle for the respondent.

BUTT, J., held that this, being an objection in the nature of a demurrer, could not be decided on summons in chambers, but must be brought before the Court on motion.

Summons dismissed accordingly.

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Table of Cases.

HOUSE OF LORDS.

House of Lords. Feb. 25, 26, 28. April 8. — COWPER-ESSEX *v.* THE LOCAL BOARD FOR THE DISTRICT OF ACTON.

Compensation—Compulsory Taking of Land—Sewage Works—'Injuriously affecting' other Lands not Contiguous to Land Taken—Lands Clauses Consolidation Act, 1845 (8 & 9 *Vict. c.* 18), *ss.* 49, 63.

This was an appeal from a decision of the Court of Appeal (reported 55 Law J. Rep. Q. B. 313), which reversed a decision of the Queen's Bench Division.

Sir H. Davey, Q.C., and *C. H. Anderson, Q.C.*, for the appellant.

Sir R. E. Webster, Q.C. (*Attorney-General*) and *Pollard* for the respondents.

Cur. adv. vult.

Their LORDSHIPS (LORD HALSBURY, L.C., LORD WATSON, LORD BRAMWELL, LORD FITZGERALD, and LORD MACNAGHTEN) reversed the decision of the Court of Appeal.

Appeal allowed.

Solicitors: Hedges and Brandreth; A. Helmsley.

House of Lords. March 4, 5, 7. April 8. — MACDOUGALL *v.* T. & H. KNIGHT.

Libel—Privilege—Judgment, Verbatim Report of.

This was an appeal from a decision of the Court of Appeal (reported 55 Law J. Rep. Q. B. 464), affirming a decision of the Queen's Bench Division.

The appellant in person.

Sir E. Clarke, Q.C. (*Solicitor-General*) and *Blake Odgers*, for the respondents, were not called upon.

Cur. adv. vult.

Their LORDSHIPS (LORD HALSBURY, L.C., LORD WATSON, LORD BRAMWELL, LORD FITZGERALD, and LORD MACNAGHTEN), without deciding that the publication of an accurate report of a judgment is necessarily privileged, held that it was too late for the appellant to dispute that the judgment published by the respondents fairly stated the effect of the evidence, and on that ground dismissed the appeal.

Appeal dismissed.

Solicitors: H. H. Myer; Torr, Janeways, Gribble, and Oddie.

COURT OF APPEAL.

Court of Appeal. COTTON, L.J. LINDLEY, L.J. FRY, L.J. April 5. — *In re* PARK. COLE *v.* PARK.

Solicitor and Client—Taxation—Costs—Delivery of Bills more than a Year before Death of Client—Claim of Solicitor in Administration of Client's Estate—Solicitors Act (6 & 7 *Vict. c.* 73), *s.* 37.

Appeal by solicitors from an order of STIRLING, J. The case is noted *ante*, p. 6, and reported at length 58 Law J. Rep. Chanc. 128.

Grosvenor Woods for the appellants.

Graham Hastings, Q.C., and *Bardswell*, for the respondent, were not called on.

Their LORDSHIPS dismissed the appeal, with costs.

Solicitors: Powell & Rogers (agents for Longcroft & Green, Havant) for the appellant; C. C. Sherrard (agent for New & Co., Evesham) for the respondent.

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Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
April 8.

GARRARD *v.* EDGE & SONS.

Practice—Patent—Application for Inspection of Models not in Defendant's Possession—Patents, &c., Act, 1883 (46 & 47 *Vict. c.* 57), *s.* 30.

This was an action for an infringement of a patent for improvements in presses for forming tiles.

The defendants, by their particulars of objections (particular 4), alleged that the invention was published within the realm prior to the date of the plaintiff's letters patent, by the manufacture and use and sale of dies made according to the alleged invention by the several persons in the particular named at the times and places therein mentioned.

The plaintiff took out a summons that the defendants might be ordered to produce and show to the plaintiff, his attorney, agents, or witnesses (at all convenient times, and upon receipt of a twenty-four hours' notice, at the office of the defendants' attorney, Messrs. Robinson, Preston & Stow, or at some convenient place to be named by him), for their examination and inspection, all dies and parts of dies, and models and drawings of dies intended to be produced by the defendants at the hearing of the action, as being or representing dies used prior to the date of the plaintiff's patent by the persons named in particular 4 of the defendants' particulars of objections.

The dies and models sought to be inspected were not in the possession of the defendants.

KAY, J., dismissed the summons on the ground that he had not jurisdiction to make the order asked.

The plaintiff appealed.

Carpmael (*Moulton, Q.C.*, with him), for the appellant.

Aston, Q.C., and *Chadwyck Healey* for the respondents, were not called upon.

Their LORDSHIPS held that there was no authority for ordering defendants to produce dies which they had not in their possession, and dismissed the appeal.

Appeal dismissed.

Solicitors: Francis & Johnsons, for appellant; Robinson, Preston & Stow, for respondents.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
BOWEN, L.J.
April 8.

In re THE RAILWAY TIME-TABLES PUBLISHING COMPANY (LIM.).

Company—Shares—Issue at Discount—Invalidity of Contract—Repudiation—Rectification of Register—Ignorance of Law—Companies Act, 1867, *s.* 25.

Appeal from a decision of STIRLING, J., noted December 15, 1888.

In November, 1886, the company resolved to issue 5,000 5*l.* shares at 10*s.* per share, or, in other words, at a discount of 4*l.* 10*s.* a share.

On January 14, 1887, 673 shares of the above issue were allotted to Mrs. Sandys, and 5*s.* per share was paid by her upon allotment.

On March 25, 1887, Mrs. Sandys received the certificate of the shares on payment of the balance of the 10*s.* per share.

On March 30, 1887, Mrs. Sandys sold 150 of the shares to a purchaser for value, and she obtained a new certificate for the 523 shares remaining unsold. The 150 shares were subsequently repurchased by Mrs. Sandys.

In April and August, 1887, she executed transfers of some of the remaining shares, but such transfers were not registered.

In January, 1888, she sent in proxies for votes to be used at a meeting of the company.

On February 2, 1888, she wrote to the company, stating that she was advised that the issue of shares at a discount was illegal, and objecting to a proposed new issue of shares at a discount.

In two cases, *In re The Addlestone Linoleum Company*, 57 Law J. Rep. Chanc. 249, and *In re The Almada and Tirito Company*, 57 Law J. Rep. Chanc. 706, which were decided respectively on December 7, 1887, and May 10, 1888, it was held that the issue of shares at a discount was *ultrà vires*.

On June 3, 1888, Mrs. Sandys wrote referring to the case of *In re The Almada and Tirito Company*, and requiring the company to remove her name from the register.

On November 15, 1888, she served notice of motion upon the company for rectification of the register by removal of her name in respect of the 673 shares and for repayment of the sum paid by her for the shares.

STIRLING, J., held, as to the 150 shares which had been repurchased by Mrs. Sandys, that she was entitled to hold them as fully paid up; and as to the remaining 523 shares, that she was entitled to have her name removed and the money repaid.

The company appealed from this decision so far as it related to the 523 shares.

Beale, Q.C., and *Carson* for the appellants.

Buckley, Q.C., and *J. Chester* for the respondent.

Their LORDSHIPS in allowing the appeal held that although the original contract to take shares could not have been enforced while it was still *in fieri*, yet the applicant, having adopted the contract by treating herself as the owner of the shares, was not entitled to relief by reason of her ignorance of the legal effect of the contract. Having assented to keep the shares, her assent to pay the full amount thereon was not necessary. That was a statutory obligation imposed upon her by section 25 of the Companies Act, 1867.

Solicitors: Paine, Son & Pollock for the appellants; James Neal for the respondent.

HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
March 30.
April 6.

DUNCAN *v.* LAWSON.

Mortmain—Will of Domiciled Scotchman—Leaseholds in England—Invalid Bequest by 'Lex loci rei sitæ'—Persons entitled—Next-of-kin according to Scotch or English Law.

The testator, a domiciled Scotchman, by his testamentary disposition gave his property, which comprised leaseholds situate in England, to trustees, with power to convert upon trust in the events which happened for certain charities.

This was a petition under 22 & 23 Vict. c. 63 for the opinion of the High Court on a case stated by the Scotch Court of Session, raising the question as to the

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validity of the disposition of the English leaseholds; and, if the disposition was invalid, then as to who were the persons entitled to the leaseholds or the proceeds of sale thereof.

It was admitted that the disposition of the English leaseholds was void under the Statute of Mortmain. The question argued was whether the leaseholds or the proceeds of sale thereof belonged to the testator's next-of-kin according to Scotch law, or to the testator's next-of-kin according to English law.

Rigby, Q.C. (*Brodie Innes* with him), argued the case for the next-of-kin according to English law.

Sir H. Davey, Q.C. (*Renshaw, Q.C.*, and *R. Younger* with him), argued the case for the next-of-kin according to Scotch law.

KAY, J., held that the persons entitled to the testator's personal estate as next-of-kin according to the English Statute of Distributions were entitled to the leaseholds or the proceeds of sale thereof; and answered the question accordingly.

Solicitors: Faithfull & Owen; Nolsh & Howell.

Chancery Division. CHITTY, J. March 29. } CAMPBELL *v.* LLOYD'S BANK.

Practice—Mortgage—Mines—Receiver and Manager.

The Court has jurisdiction at the instance of mortgagees of collieries held under leases containing working covenants to appoint a manager of the property and business, notwithstanding that the latter is not specifically comprised in the security.

Latham, Q.C., Rawlinson, and *Farwell* for the parties.

Solicitors: Walters, Deverell & Co.; Davidson & Morris.

Chancery Division. CHITTY, J. April 5. } *Re* DAWSON. JOHNSTON *v.* HILL.

Practice—Service—Lunatic not so found—Guardian 'ad litem'—Rules of Supreme Court, 1883, *Order XIII., rule* 1.

This was an action in which judgment had been given against the defendants, Major Dawson Hill, M. Crust, and another, as trustees of a will to pay a sum of 3,950*l.* which had by mistake of law been paid to Major Dawson Hill out of the trust funds.

Since the date of the judgment Major Dawson Hill had become of unsound mind, but had not been so found.

M. Crust having paid the whole 3,950*l.*, took out a summons claiming indemnity from Major Dawson Hill. The summons was served on him in the same way as Order XIII., rule 1, directs a writ of summons to be served on a person of unsound mind. The plaintiff, who was the mother of Major Dawson Hill, refused to have a guardian *ad litem* assigned to him.

G. Henderson applied *ex parte*, on behalf of the defendant M. Crust, for the appointment of the official solicitor as guardian *ad litem* to Major Dawson Hill, and referred to *In re Pepper*, 53 Law J. Rep. Chanc. 1,054.

CHITTY, J., thought that although Order XIII., rule 1, applied only to writs of summons, he could act by analogy to the rule. If he could not, the applicant would have to commence a fresh action. He accordingly appointed the official solicitor guardian *ad litem*.

Solicitors: Long and Gardiner.

Chancery Division. CHITTY, J. April 9. } *Re* BURLANDS' TRADE-MARK. BURLANDS *v.* THE ROXBURGH OIL COMPANY.

Practice — Service out of the Jurisdiction — Rules of Supreme Court, Order XI., rule 1, *sub-rule* (*f*).

This was an application for leave to serve the writ in this action (which was to restrain an infringement of the plaintiff's trade-mark) on the defendants, a joint-stock company having their registered office in Scotland.

Though the defendant company's principal place of business was at Glasgow, it had branch establishments in London, Manchester, and Hull; and according to the plaintiff's affidavit the defendant company was supplying the goods of which he complained as infringing his trade-mark from their branch establishments at Manchester and Hull. The plaintiff also proved the execution from Manchester of an order given by one of his own customers. It was also stated that it would be necessary to call, in support of the plaintiff's case, a considerable number of witnesses all of whom were resident in England. The plaintiff also resided and carried on his business in England.

John Cutler, for the plaintiff, argued that the present case was distinguishable from *Marshall* v. *Marshall*, L. R. 38 Chanc. Div. 330, as the injunction, if obtained, could be enforced by sequestration against the defendant company's property in England. He also referred to *Tozier* v. *Hawkins*, 55 Law J. Rep. Q. B. 152; L. R. 15 Q. B. Div. 680, as showing that no hard-and-fast rule could be considered as laid down by *Marshall* v. *Marshall*.

CHITTY, J., gave leave to serve the writ.

Solicitors: Torr, Janeway, Gribble & Oddie.

Chancery Division. NORTH, J. April 2. } *Re* THE PORTUGUESE CONSOLIDATED COPPER MINES (LIM.).

Company — Rectification of Register — Quorum of Directors — Irregular Appointments — Invalid Allotment.

This was a motion, under section 35 of the Companies Act, 1862, to rectify the register of shareholders by removing from it the name of one Steele, as the holder of 100 shares, on the ground that no binding allotment had been made to him.

The company was registered in October, 1888. The articles of association excluded table A. of the Companies Act, 1862. They provided that the shares should be allotted by the directors, and that the directors might determine the quorum necessary for the transaction of business.

On October 22 it was duly resolved that four gentlemen (named) should be appointed directors. On October 24, Steele applied for 100 shares. On the same day the first board meeting was held; two only of the four directors were present. They resolved that two directors should form a quorum, and then proceeded to allot (amongst other allotments) 100 shares to Steele. Steele received his letter of allotment the same evening. On the following day, Steele gave notice in writing to the company that he withdrew his application.

After Steele had withdrawn his application, the two other directors (who had been absent from the board

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meeting of October 24), in writing, expressed their approval of the resolution that two should form a quorum.

Higgins, Q.C., and *Farwell* for the motion.

Cozens-Hardy, Q.C., and *W. Baker* for the company.

NORTH, J., held that the allotment was invalid; that the two directors could not appoint themselves a quorum; and that the resolution could not be ratified by what the other two directors did after Steele had withdrawn his application.

Solicitors: Stretton, Hilliard & Co., for the motion; Burn & Berridge for the company.

Chancery Division. KEKEWICH, J. April 6. } WITHERS *v.* PURCHASE.

Riparian Owner—Mill Stream—Dredging and Scouring—Prescription Act (2 & 3 *Wm. IV. c.* 71), *s.* 2—*Injunction.*

The plaintiffs, who were the owners and occupiers of a water mill situate on a cutting made from the River Test, at Romsey, claimed an injunction to restrain the defendants, who were the occupiers of another mill situate at a lower point in the same river, from digging or removing gravel or any other substance, or otherwise dealing with the bed of the river so as to interfere with the flow of the water.

The plaintiff's case was that the result of the defendant's operations for dredging and cleansing the bed of the stream above their mill was such as to alter and deepen the bed, and so prevent the sufficient flow of water into the cutting which supplied the plaintiffs' mill.

The defendants claimed that their operations were within their rights as riparian owners, and further were warranted by prescription under the Prescription Act, section 2.

Warmington, Q.C., S. Hall, Q.C., and *Coltman* for the plaintiffs.

Neville, Q.C., and *Grosvenor Woods* for the defendants.

KEKEWICH, J., held that, assuming the defendants possessed the rights of riparian owners, they had, by so dredging and scouring as to alter the channel and flow of the stream, exceeded those rights. His lordship further held that, although a right to do the acts complained of might be acquired under the Prescription Act, yet in this case the defendants had failed to adduce such definite evidence as was necessary to establish the right.

Judgment was given for the plaintiffs, with costs.

Solicitors: Winterhouse & Etherington (for Tylee & Mortimer, Romsey), E. F. B. Harston.

Queen's Bench Division. April 5. } SMALLWOOD *v.* KING.

Practice—Trial—Motion for Judgment—Absence of Judge's Notes.

This was a motion for judgment in a case tried before MANISTY, J., in which he had left the parties to move.

Chitty moved accordingly; but, as the judge's notes were not forthcoming,

The COURT (DENMAN, J., and STEPHEN, J.) declined to hear the motion until a copy of the judge's notes had been procured, holding that in motions for judgment the practice should be assimilated to motions for new trials.

Motion adjourned.

Probate, Divorce, and Admiralty Division. April 8. } QUAGLIENI *v.* QUAGLIENI & WOOD.

Divorce—Age of Co-respondent.

In a case where the husband petitioned for a dissolution of marriage on the ground of his wife's adultery it appeared that at the time the alleged acts of adultery were committed the co-respondent was only thirteen years of age.

Middleton for the petitioner.

Waddy, Q.C., for the respondent.

BUTT, J., held that circumstantial evidence only of adultery could not be received, the co-respondent being under the age of fourteen years.

Petition dismissed, with costs.

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Table of Cases.

COURT OF APPEAL.

HIGH COURT OF JUSTICE.

COURT OF APPEAL.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
April 11.

AYSCOUGH *v.* BULLAR.

Practice—Leave to add Plaintiff—Rules of Supreme Court, 1883—*Order XVI., rule 2.*

Appeal from a decision of NORTH, J.

The plaintiff Miss Ayscough, who was the owner of No. 3 Lower Prospect Place, Southampton, brough tthis action against the defendants, who were the owner in fee and the lessee of No. 1 Lower Prospect Place, for an injunction to restrain the defendants from building contrary to a restrictive covenant. By the defence it was stated that one of the persons through whom the plaintiff Miss Ayscough claimed was at the same time in the position of covenantor and covenantee. At the time when the writ was settled it was thought that Captain Ayscough, the owner of No. 4 Lower Prospect Place, had taken his conveyance at a date anterior to the restrictive covenant entered into by the owner of No. 1 with the predecessors in title of Miss Ayscough, and therefore Miss Ayscough was made sole plaintiff. After discovery made by the defendant it appeared that Captain Ayscough's conveyance was dated after the deed containing the covenant, and therefore he had a separate right to enforce the covenant, and the plaintiff Miss Ayscough applied for leave to amend and add him as a plaintiff.

NORTH, J., refused the application, on the ground that he was bound by the decision in *Walcott* v. *Lyons*, 54 Law J. Rep. Chanc. 847; L. R. 29 Chanc. Div. 584.

The plaintiff appealed.

Cozens-Hardy, Q.C., and *F. H. Colt* for the appellant.

Everitt, Q.C., and *Maidlow* for the respondents.

Their LORDSHIPS held that the case came within Order XVI., rule 2, and that leave ought to be given to add Captain Ayscough as plaintiff, on the terms that, if it should appear on the trial that Captain Ayscough was entitled to the relief sought and Miss Ayscough was not, she should pay all costs up to the amendment, and that Captain Ayscough should only be entitled to such relief (if any) as he would have been entitled to if the action had commenced at the date of the amendment. *Walcott* v. *Lyons* was distinguishable, it was decided on Order XVI., rule 11, and was an action by a tenant-for-life for breach of trust, the defendants, the trustees, alleged that the breach had been committed at his request, and the plaintiff then sought to amend by adding his son, who was entitled to a reversionary interest, as co-plaintiff, and the Court thought he had not made out a case within Order XVI., rule 11, and that it would be wrong to make an order for the son to be made a party.

Appeal allowed.

Solicitors: Peacock & Goddard (agents for Sharp, Harrison & Co., Southampton) for the appellant; Stocken & Jupp (agents for R. R. Lomer, Southampton).

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Court of Appeal.
LORD ESHER, M.R.
FRY, L.J.
LOPES, L.J.
April 12.

In re E. H. WENDT, *ex parte* THE OFFICIAL RECEIVER.

Bankruptcy—Practice—Notice to Bankrupt to attend Public Examination—Service Abroad—Bankruptcy Act, 1883 (46 & 47 *Vict. c.* 52), *ss.* 17, 127—*Bankruptcy Rules* (1886), 184, 186.

Appeal of the official receiver, acting as trustee, from the refusal of Mr. Registrar Linklater to appoint a day for the public examination of the bankrupt, and for service abroad on the bankrupt of the notice to attend.

M. J. Muir Mackenzie for the appellant.

Their LORDSHIPS held that there was no power under the Bankruptcy Act or Rules to order service abroad of notice on a bankrupt to attend his public examination.

Appeal dismissed.

Solicitor: The Solicitor to the Board of Trade.

Court of Appeal.
LORD HALSBURY, L.C.
COTTON, L.J.
LINDLEY, L.J.
April 12, 13.

THE COUNTESS OF CARDIGAN *v.* EARL HOWE.

Settled Land Act, 1882, *s.* 20, *subs.* 1, 2 (11); *s.* 21, *subs.* (5); *ss.* 46, 50, *subs.* 3, 53—*Sale by Tenant-for-life—Mortgagees of Life Estate—Consent—Costs—Capital Money.*

Appeal from a decision of CHITTY, J., reported 58 Law J. Rep. Chanc. 177; L. R. 40 Chanc. Div. 338.

Byrne, Q.C., and *Fossett Lock* for appellants.

Romer, Q.C., and *Nalder*, for respondents, were not called upon.

Their LORDSHIPS, without holding, as Chitty, J., did, that the costs of obtaining the concurrence of the mortgagees of the life estate on a sale by the tenant-for-life were not costs 'of or incidental to the exercise of' any of the statutory powers or provisions, held that the tenant-for-life ought not to be allowed out of the capital the costs of obtaining the concurrence in the sale of the mortgagees of the life estate whose securities she had created for her own purposes, and dismissed the appeal.

Solicitors: Walker & Mewburn Walker for the appellant; A. R. & H. Steele for respondents.

Court of Appeal.
FRY, L.J.
LOPES, L.J.
April 13.

LISTER *v.* WOOD.

County Courts—Jurisdiction—Leave to Appeal—Prohibition—New Trial—Striking out Case—County Courts Act, 1888 (51 & 52 *Vict. c.* 43), *ss.* 128, 93, 114—*County Courts Act*, 1867 (30 & 31 *Vict. c.* 142), *s.* 14—*County Courts Act*, 1846 (9 & 10 *Vict. c.* 95), *s.* 89—*Judicature Act*, 1873 (36 & 37 *Vict. c.* 66), *s.* 45.

Appeal of the defendant from the order of HUDDLESTON, B., and MANISTY, J., dismissing an application for prohibition to a County Court.

Channel, Q.C., and *C. Monro* for defendant.

Macaskie for plaintiff.

Their LORDSHIPS held that, having regard to section 128 of the County Courts Act, 1888, no leave to appeal was required, and that the County Court judge had, under the County Courts Act, 1846, s. 89 (reproduced in section 93 of the County Courts Act, 1888), power to re-hear an action which he had struck out for want of jurisdiction under the County Courts Act, 1867 (30 & 31 Vict. c. 142), s. 14 (reproduced in the County Courts Act, 1888, s. 114).

Appeal dismissed.

Court of Appeal.
COTTON, L.J.
LINDLEY, L.J.
April 9, 16.

In re MARTIN.

Solicitor—Negotiations for Lease—Costs of Abortive Negotiations—Solicitors' Remuneration Act, 1881 (44 & 45 *Vict.*)—*General Order under Solicitors Act*, 1881, *rule* 2 (*b*)—*Schedule* 1, *part* 2.

The committee of a lunatic instructed a solicitor to let a house the property of the lunatic. The solicitor carried on negotiations first with P. to take a lease of the house, and then with other persons, and ultimately P. took a lease. The taxing-master disallowed all costs charged for negotiations with persons other than the lessee, on the ground that all these negotiations ought to be included in the scale fee. The solicitor now applied to the Court for a direction for the taxing-master to review his taxation with regard to these costs.

Sir Horace Davey, Q.C., and *Archibald* in support of the application.

Their LORDSHIPS held that the question turned on the construction of the General Order under the Solicitors' Remuneration Act, 1881, rule 2 (*b*), and schedule 1, part 2, whether the work charged for was work covered by the scale, and that the negotiations for a lease with the persons other than the lessee were not completed transactions within rule 2 (*b*), and, therefore, the remuneration for them was not covered by schedule 1, part 2, but the solicitor was entitled to charge separately for the same.

Solicitor: G. W. Barnard.

HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
March 7, 25.
April 13.

BATTEN *v.* GEDYE.

Churchyard—Removal of Approach by Incumbent and Churchwardens—Action by Parishioners in Chancery Division—Mandatory Injunction—Jurisdiction.

This was an action by parishioners against the incumbent and churchwardens of the parish of Barwick, in the county of Somerset, to compel, by way of mandatory injunction, the restoration of some old steps leading from the churchyard into the high road, which had been removed without any faculty for that purpose by the defendants. The steps were not part of a public highway through the churchyard, but merely led to the church, to which there was other approach. For the defendants it was contended, amongst other things, that if a wrong had been done the remedy lay in the Ecclesiastical Court, and that this Court would refuse to interfere.

Sir W. Phillimore, Q.C., Blake Odgers, and *C. Stubbs* for the plaintiffs.

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Renshaw, Q.C., and *W. D. Rawlins* for the defendants.

KAY, J., said that there was no authority for the interference of a Court of common law or equity with a churchway within a churchyard at the suit of a parishioner. If this Court were to grant the injunction, a faculty might still be obtained confirming what had been done, which this Court would have no right to prevent or interfere with. The Court, therefore, would decline to exercise jurisdiction, and the action must be dismissed; but as the defendants had removed the steps without the authority of a faculty, and had acted irregularly, the action would be dismissed without costs.

Solicitors: Rowcliffes, Rawle & Co. (agents for W. Marsh, Yeovil) for the plaintiff; Bolton, Robbins, Busk & Co. (agents for Hobbs & Davies, Wells) for the defendant.

Chancery Division. NORTH, J. April 8. } *Ex parte* THE SCHOOL BOARD FOR LONDON.

Estate Tail in Copyholds—Effect of Deed of Enfranchisement.

In the year 1860 a tenant-in-tail of copyholds died, having by his will devised all his real estate to two trustees upon trust for his only child, Mrs. Proctor, absolutely.

In the year 1863 the two trustees were duly admitted tenants on the rolls, and on July 10, 1866, the lord of the manor executed to them a deed of enfranchisement.

Cozens-Hardy, Q.C., and *Dauney* for the petition.

P. V. Smith for the School Board.

NORTH, J., held, on a petition for payment out of Court of the purchase-money of part of this property (which had been taken by the School Board for London) by persons claiming under Mrs. Proctor, that the deed of enfranchisement had barred the estate tail in the copyholds.

Solicitors: W. Beck; Gedge, Kirby & Millett.

Chancery Division. NORTH, J. April 12. } *In re* THE PONTYPRIDD AND RHONDDA VALLEYS TRAMWAYS COMPANY (LIM.).

Company—Promoters of Tramway—Inquiry by Board of Trade—Injunction—Tramways Act, 1870 (33 & 34 *Vict. c.* 78), *ss.* 4, 42, 44—*Companies Act*, 1862 (25 & 26 *Vict. c.* 89), *s.* 87.

This was a motion by the official liquidator of the above-named company to restrain an inquiry directed by the Board of Trade pursuant to section 42 of the Tramways Act, 1870.

Under the Pontypridd and Rhondda Valleys Tramways Order, made by the Board of Trade in 1882, certain persons therein named as promoters were authorised to construct a tramway. The company were not named as promoters, and it did not appear that the promoters had sold the undertaking to the company with the consent of the Board of Trade, under section 44 of the Tramways Act, 1870. The company had, however, constructed the tramway in question.

The company was ordered to be wound up in February, 1889, and an official liquidator appointed.

Upon the representation of the local boards having jurisdiction over the roads in whose districts the tramway passed, the Board of Trade directed an inquiry as to the solvency of the promoters, under section 42 of the Tramways Act, which gives power to direct such inquiry with the view to making an order that the powers of the promoters should cease.

Beddall, for the official liquidator, argued that the inquiry was such a proceeding as should be restrained under section 87 of the Companies Act, 1862.

Ingle Joyce, for the Board of Trade, submitted that the company were not promoters of the undertaking, and therefore were not affected by the inquiry.

Hornell and *Edward Ford* for the local boards.

NORTH, J., held that the company were not promoters of the tramway within section 42 of the Tramways Act, 1870, and therefore had no interest to stay the proceedings; and, further, the Court had no power to stay an inquiry of this sort, which was a step directed by the Legislature, and not a proceeding against the company within section 87 of the Companies Act, 1862.

Chancery Division. KEKEWICH, J. April 10. } TOMLINE *v.* LUCE.

Mortgagor and Mortgagee—Power of Sale—Misdescription—Compensation to Purchaser—Liability for Error.

The plaintiffs, second mortgagees of a building estate, claimed against the first mortgagees on the footing of wilful default in the exercise of their power of sale. The first mortgagees on selling gave a description of the property which was in some respects erroneous, on which account the purchaser refused to complete without compensation. The first mortgagees allowed 895*l.* by way of compromise, and that amount was held at this trial to be a reasonable allowance as between vendor and purchaser. The plaintiffs contended that the first mortgagees ought not to be allowed the amount upon their accounts, which, as they stood, showed no balance available for the second mortgage.

Neville, Q.C., and *Charles Browne* for the plaintiffs.

Warmington, Q.C., and *G. Harris Lea* for the first mortgagees.

KEKEWICH, J., held that, the misdescription being a serious error inducing a large diminution in the price realised, the first mortgagees were liable to the second mortgagees as the parties affected by that diminution in price.

Solicitors: F. J. Thairlwall; Lane, Monro & Soutter.

Chancery Division. KEKEWICH, J. April 13. } THE LONDON, CHATHAM AND DOVER RAILWAY COMPANY *v.* THE SOUTH-EASTERN RAILWAY COMPANY.

Practice—Costs—Three Counsel.

The defendants applied to review the taxing-master's certificate in an action where the main question had turned on the construction of a working agreement between the two companies. Large sums of money and difficult questions as to the principle upon which accounts should be adjusted and kept in the future were involved. The taxing-master had allowed the fees of three counsel.

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C. T. Mitchell for the defendants.

R. B. Haldane for the plaintiffs.

KEKEWICH, J., held that in such a case the employment of three counsel was reasonable, and the fees ought to be allowed.

Solicitors: Stevens; C. & S. Harrison.

Queen's Bench Division. (*Magistrates' Case.*) Nov. 22, 1888. Feb. 6, April 13, 1889.

GUYER (APPELLANT) *v.* REGINAM (ON THE PROSECUTION OF THE FIELD SPORTS PROTECTION SOCIETY) (RESPONDENT).

Game—Dealer in Game—Possession of Russian Partridges after Ten Days from Expiration of the Season—1 & 2 Wm. IV. c. 32, ss. 2, 3, 4.

This was a special case stated by a magistrate of the Police Courts of the metropolis, who had convicted the appellant, a person licensed to deal in game within the meaning of 1 & 2 Wm. IV. c. 32, s. 4, of having on March 1, 1888, unlawfully and knowingly had in his shop two Russian partridges, part of a consignment of game from Reval, in Russia, after the expiration of ten days from the day in that year on which it became unlawful to kill or take such birds of game. It was proved that the birds in question were partridges of the same species as the partridges found in England. The magistrate held that the words of section 4, 'any bird of game,' were general, and included all birds of the species named in section 2; and if section 4 did not apply to game killed abroad, great facilities would be given for evading the Act. He accordingly fined the appellants 5*s.* for each of the two birds. The question for the opinion of the Court was whether he was right in so convicting the appellant.

The case was argued before LORD COLERIDGE, C.J., and MANISTY, J., on November 22, 1888, and reargued before the same learned judges and HAWKINS, J., on February 6, 1889.

D'Eyncourt for the appellant.

R. S. Wright for the Treasury.

Wormald for the Field Sports Protection Society.

Cur. adv. vult.

On April 13 the COURT (MANISTY, J., *dissentiente*) held that, taking section 4 with section 3, the Act did not apply to foreign game birds. The appeal must accordingly be allowed, and the conviction quashed.

Appeal allowed.

Solicitors: W. Doveton Smith for the appellant; the Treasury Solicitors and Powell & Goodale for the respondent.

Queen's Bench Division. March 18. April 13.

HOPE (PETITIONER) *v.* LADY SANDHURST (RESPONDENT).

County Council—Election for Office of County Councillor—Elected Candidate a Woman—Votes Thrown Away—Local Government Act, 1888—Municipal Corporations Act, 1882.

This was a special case stated by H. H. S. Croft, Esq., barrister-at-law, pursuant to an order of the Queen's Bench Division. The first question was whether the respondent, being a woman, and a person entitled, by virtue of the Local Government Act, 1888, to vote at an election of county councillors, was or was not herself a person fit and qualified to be elected a county councillor within the meaning of the same Act and the Acts incorporated therewith. The second question was whether, assuming the respondent was not so qualified, the votes given for her were thrown away and the petitioner duly elected.

There were four candidates at the election, when E. H. Verney polled 2,112 votes, the respondent 1,986 votes, the petitioner 1,686, and H. Smallman 1,397 votes. E. H. Verney and the respondent were in the usual manner declared to be elected.

Finlay, Q.C., and *Day* for the petitioner.

Reid, Q.C., and *Costello* for the respondent.

Cur. adv. vult.

April 13. — The COURT (HUDDLESTON, B., and STEPHEN, J.) held that the election of the respondent was void, that the votes given for her were thrown away, and that the petitioner was duly elected.

Solicitors: Walker, Walker, Martineau & Co. for petitioner; Pyke and Minchin for respondent.

Queen's Bench Division. April 15.

EDER & CO. AND ANOTHER *v.* ATTENBOROUGH AND OTHERS.

Practice—Interrogatories—Security for Cost of Discovery—Five Defendants—Order XXXI., rule 26.

An agent of the plaintiffs having obtained a number of articles of jewellery from the plaintiffs by fraud, had pawned them with five firms of pawnbrokers. The plaintiffs joined these five firms of pawnbrokers as defendants in an action for recovery of the goods. The whole of the defendants appeared by one solicitor, and delivered a joint defence. The plaintiffs delivered one set of interrogatories, and called upon the different defendants to answer such and such of them according to circumstances, but not requiring answers to the whole from each defendant alike, and paid ten guineas into Court as security, which was made up of the 5*l.* required by Order XXXI., rule 26, and 10*s.* for every additional folio exceeding five. The defendants then applied to and obtained from a master an order that the interrogatories administered by the plaintiffs be struck out unless within seven days the plaintiffs paid into Court as security the further sum of 42*l.* 10*s.* The learned judge at chambers, however, rescinded this order of the master, holding that, as the five defendants appeared together by one solicitor, and delivered one defence, the deposit of the one sum of 5*l.*, with the further sum for additional folios exceeding five at the rate of 10*s.* a folio, was sufficient. From this rescission of the master's order by the learned judge at chambers the defendants appealed.

Moses, for the defendants, in support.

Rose-Innes, for the plaintiffs, opposed.

The COURT (POLLOCK, B., and FIELD, J.) held that the order of the learned judge at chambers rescinding that of the master was right, and must be affirmed.

Appeal dismissed.

Solicitors: J. & C. Attenborough for plaintiffs; Lewis & Churchman for the defendants.

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Court of Appeal.
LORD ESHER, M.R.
FRY, L.J.
LOPES, L.J.
April 15, 16.

In re BATTEN. *Ex parte* MILNE.

Deeds of Arrangement Act, 1887 (50 & 51 *Vict. c.* 57)—*Execution of Deed by Creditors subsequently to Registration.*

Appeal from order of a Divisional Court (CAVE, J., and CHARLES, J.).

On June 25, 1888, the debtor, a trader carrying on business at Bristol, executed a deed of arrangement with creditors. The deed was registered under the Deeds of Arrangement Act, 1887, within seven days of its execution by the debtor—namely, on July 2, 1888.

On September 24, 1888, that is to say, within three months of the execution of the deed, a petition in bankruptcy was presented by creditors against the debtor in the Bristol County Court. The alleged acts of bankruptcy were the execution of the deed and also a subsequent execution levied on the goods comprised in the deed. Upon this petition the registrar made a receiving order.

It subsequently appeared that the combined debts of the petitioning creditors did not amount to 50*l.*, and upon this the trustee, T. Milne, in whom the debtor's property was alleged to be vested under the deed of arrangement, appealed.

At the time the deed of arrangement was registered it had been executed by two creditors only; but, after the registration, six other creditors executed it. Upon the hearing of the appeal it was objected on behalf of the official receiver that the trustee Milne had no *locus standi*, he not being a party aggrieved, inasmuch as the deed of arrangement under which he claimed was void and had not been duly registered under the Deeds of Arrangement Act, 1887, because of the execution of the deed by creditors after its registration.

The deed in question was made between the debtor of the first part, Milne of the second part, a committee of inspection of the third part, the creditors of the fourth part, and Maria Waite, the debtor's mother and a creditor, of the fifth part, the creditors of the fourth part being thus described: 'The several persons, companies, and firms, whose names and seals are hereunto signed and affixed, respectively being creditors of the said C. W. Batten, and all other creditors of the said C. W. Batten acceding hereto (herein called "the creditors") of the fourth part.' After reciting that the debtor, being indebted or liable to the said creditors for the sums set opposite their names in the schedule thereto, and being unable to meet such liabilities in full it had been agreed that the several parties thereto should enter into the covenants and agreements thereinafter contained, the deed witnessed that in pursuance of the said agreements and in consideration of the premises, the debtor, as beneficial owner, conveyed to the said trustee, his heirs, &c., all his real and personal property upon trust, subject to the payment of costs and expenses and of claims entitled to priority as in bankruptcy, 'to divide the balance rateably among the creditors parties hereto (including as such creditors, if the trustee and inspectors shall determine, but not otherwise, such

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persons being creditors of the said debtor as may have refused or neglected to execute these presents).' The deed then witnessed that the said creditors (provided the deed was registered and not set aside in bankruptcy) released the said debtor from the debts specified in the schedule thereto and from all other debts (if any) owing from the debtor to the said creditors in respect whereof they would be entitled to receive dividends.

The Divisional Court held that the deed was avoided by the execution of it by creditors after its registration, and affirmed the receiving order.

The trustee under the deed appealed.

Rigby, Q.C., and *Wace* (*F. C. Willis* with them) for the trustee.

The Attorney-General and *Muir M'Kenzie* (*Herbert Reed* with them) for the official receiver.

Their LORDSHIPS allowed the appeal. Their lordships were of opinion that the deed had not been altered after its registration by the execution of it by other creditors, and having admittedly been properly registered on July 2, 1888, it was true to say that the deed under which the trustee claimed was valid and properly registered, notwithstanding the execution by creditors subsequent to the registration. Having regard to the purpose and terms of the deed and to the fact that not only the creditors executing, but creditors acceding thereto, were parties to the deed, the subsequent execution by creditors, so far from altering the effect of the deed, carried it out, and there was nothing in the Deeds of Arrangement Act to show that the creditors must have executed before registration, but rather the contrary. FRY, L.J., was further of opinion that, even supposing the deed to have been avoided by the subsequent execution by creditors, still the debtor's property having vested in the trustee under the deed admittedly valid, and duly registered on July 2, 1888, the trustee was not divested of that property merely because the deed became void subsequently; and as the bankruptcy proceedings would affect the property thus vested in the trustee, he was a party interested and entitled to appeal.

Appeal allowed.

Solicitors: Burn & Berridge (for Trapnell, Bristol) for the trustee; Solicitor to the Board of Trade for the Official Receiver.

HIGH COURT OF JUSTICE.

Chancery Division. CHITTY, J. April 18. — *Re* PHILLIPS (DECEASED). ROBINSON *v.* BURKE.

Wills Act, s. 27—Settlement—Power of Appointment—General Residuary Gift—Contrary Intention.

P. by a voluntary settlement directed his trustees to invest and deal with the trust premises in such manner in all respects as he should from time to time order and direct by any writing (but not by his will, unless he should expressly refer to the trust funds and premises), and, subject to such trust, to stand possessed of the funds upon trusts in favour of R. and her children.

P. by his will gave and bequeathed all his household estates and personal estate and effects whatsoever and wheresoever unto his executors upon trusts in favour of other persons than R.

Romer, Q.C., and *Warrington*; *Allen* and *Bramwell Davis*, for the parties.

CHITTY, J., held that in the face of the restriction contained in the settlement confining any power of disposition by will to a will referring expressly to the settlement, the general residuary gift in the testator's will could not operate under section 27 of the Wills Act as an appointment under the settlement.

In re Marsh; Mason v. *Thorne*, 57 Law J. Rep. Chanc. 639; L. R. 38 Chanc. Div. 630, doubted.

Solicitors: Potter, Sandford & Kilvington; Allen & Son.

Chancery Division. NORTH, J. April 12. — *In re* TIMSON. ALWEY *v.* TIMSON.

Will—'Moneys in the bank'—Voluntary Settlement—Imperfect Transfer.

A testator gave to E. the whole of his houses, land, furniture, jewellery, and moneys in the bank in trust for her two children. At the time of his death he was residing in France, and wished to invest 3,000*l.* in Consols for the benefit of his natural daughter, who was a minor. The cashier of the bank with which he dealt informed him that their rules prevented their purchasing Consols in the name of a minor, and advised him that he should have the Consols purchased payable to bearer, and hand the scrip over to the daughter. He ordered such purchase to be made, and told the daughter, who was with him, 'These Consols are for you.' He died before the scrip was handed over to him.

Napier Higgins, Q.C., and *J. G. Wood*, for the natural daughter, argued that the testator had constituted himself a trustee of the Consols for her.

Willis Bund, for E., argued that the Consols passed under the gift of 'moneys in the bank.'

Cozens-Hardy, Q.C., and *L. Field* for the next-of-kin.

NORTH, J., held that the Consols did not pass under the bequest of moneys in the bank, and that there had been no complete transfer or declaration of trust in favour of the natural daughter or evidence of intention by the testator to constitute himself a trustee for her. There was therefore an intestacy as to the Consols.

Chancery Division. STIRLING, J. April 9, 16. — THE ATTORNEY-GENERAL *v.* THE MAYOR, &c., OF CROYDON.

Free Libraries Acts—Adoption by Borough—Issue of Voting Papers—Owners or Occupiers—Public Libraries Acts, 1855, 1866, 1877.

Motion by the Attorney-General at the relation of two inhabitants of the borough of Croydon to restrain the mayor and corporation from adopting the Free Libraries Acts on the ground that a poll taken for the purpose of ascertaining the opinion of the majority of

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the ratepayers was invalid. The voting papers had been issued to the occupiers on the rate-book, although an order had been made by the Croydon Vestry, dated November 30, 1869, that the owners of all rateable hereditaments to which sections 3 and 4 of the Poor-rate Assessment and Collection Act, 1869, extended within the parish should be rated to the poor-rate instead of the occupiers. The Free Libraries Act, 1877, s. 1, gave local authorities, having power to adopt the Acts, liberty to ascertain the opinion of the constituency either by public meeting or by the issue of voting-papers to the ratepayers, and section 3 provided that '"ratepayer" shall mean every inhabitant who would have to pay the free library assessment in the event of the Act being adopted.' It was contended for the plaintiffs that the voting-papers ought to have been issued to the owners instead of the occupiers. For the defendants it was argued that according to the construction of the Libraries Acts the persons entitled to vote on the question of the adoption or non-adoption of the Acts were those upon whom the burden of the rates would fall—viz. the occupiers—inasmuch as when the rates were paid by the hand of the owner they were practically charged against the occupier in the shape of additional rent.

Buckley, Q.C., and *Percy Wheeler* for the plaintiffs.

Hastings, Q.C., and *R. S. Wright* for the defendants.

STIRLING, J., held that the voting-papers were properly issued to the occupiers, and dismissed the motion.

Solicitors: Kearsey, Hawes & Walsh (agents for S. G. Edridge, Croydon) for plaintiffs; Edmund Dean (agent for the town clerk of Croydon) for defendants.

Chancery Division. KEKEWICH, J. April 13. } *Re* BOSWORTH. MARTIN *v.* LAMB.

Trustee—Accounts and Information—Indemnity against Expenses—Trustee Solicitor.

The plaintiff, claiming to have an interest in an estate, required the trustees to furnish information. The trustees, being advised that the plaintiff had no interest, and knowing that reference to documents was necessary in order to comply with the demand, declined to give the information except upon an undertaking to pay their costs. The plaintiff thereupon brought an action for accounts; but being satisfied by discovery in the action that he had no interest, contended at the trial that he ought not to pay the trustees' costs. One of the trustees was a solicitor.

Neville, Q.C., and *Lewis Coward* for the plaintiff.

Barber, Q.C., and *Levett* for the trustees.

KEKEWICH, J., held that the trustees rightly required to be indemnified against the costs to be incurred in supplying the information demanded, and that the fact that one of the trustees was himself a solicitor made no difference in their position in that respect. The plaintiff was ordered to pay all the costs of the action.

Solicitors: Gedge, Kirby & Millett; Warren, Gardner & Murton.

Queen's Bench Division. (*Magistrates' Case.*) April 4. } REGINA *v.* THE JUSTICES OF SOMERSETSHIRE.

Quarter Sessions—Poor Law—Appeal against Order of Removal—Procedure upon Appeal—11 & 12 *Vict. c.* 31—*Summary Jurisdiction Acts*, 1879 *and* 1884 (42 & 43 *Vict. c.* 49, *s.* 31; 47 & 48 *Vict. c.* 43, *s.* 6).

This was an application for a *mandamus* commanding the defendants to enter continuances and hear an appeal in which the Axminster Union were the appellants and the Chard Union respondents.

The appeal in question was against an order for the removal of a pauper; and it was admitted that if the appeal had been prior to the passing of the Summary Jurisdiction Acts, 1879 and 1884, all proper notices had been given.

The sessions held that the procedure regulating appeals was governed by the two above-mentioned Acts, and inasmuch as it had not been followed by the appellants, the sessions had no jurisdiction to hear the appeal.

A rule *nisi* for a *mandamus* was afterwards obtained, against which

Horne Payne, Q.C. (*Douglas Metcalfe* with him), showed cause on behalf of the sessions. The object of the Summary Jurisdiction Acts, 1879 and 1884, was to secure uniformity of procedure in appeals in all cases; and the effect of section 6 of the latter Act was to compel the appellants to conform with the procedure laid down in section 31 of 42 & 43 Vict. c. 49.

Poland, Q.C. (*C. Mathews* with him), for the applicants, was not called upon to argue.

The COURT (LORD COLERIDGE, C.J., and HAWKINS, J.) held that, inasmuch as section 6 of the Summary Jurisdiction Act, 1884, only applied to orders 'made in pursuance of the Summary Jurisdiction Acts,' orders of removal not being so made were not included, and that consequently the old procedure was still kept alive; and the appellants were entitled to have their appeal heard.

Rule absolute.

Solicitors: Geare, Son & Pease (for Forward, Axminster) for applicants; Dommett (for Paull, Ilminster) for respondents.

Queen's Bench Division. April 30. } GLEDHILL *v.* CROWTHER.

County Council—Nomination Paper—Signature of Candidate's Proposer—Addition to Signature of Word 'Junior'—Name on Register without any Addition—Objection lodged with Returning Officer.

This was a special case stated under the Local Government Act, 1888 (51 & 52 Vict. c. 41), and the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), and the

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Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70). The petitioner and respondent were candidates at the election of a county councillor. The petitioner's proposer was an elector of the name of James Sykes, who, however, signed the nomination paper thus: James Sykes, junr. The respondent thereupon gave notice to the returning officer that he objected to the petitioner's nomination paper, on the ground that the name of James Sykes, junr., did not appear upon the register of electors. This objection was allowed. It was found by the case that there were three persons (other than the said James Sykes) of the name of James Sykes entered on the register as voters. The addition of 'Junior' was first used as part of his signature by the said James Sykes to distinguish him from his father, who had then been dead for many years, and that he was generally known throughout the electoral division as 'James Sykes, junr.' The usual signature of the said James Sykes was, and always had been, 'James Sykes, junr.' None of the other three persons of the same name so entered upon the register was known as, or signed himself as, James Sykes, junior.

The question for the opinion of the Court was, whether the said objection to the nomination of the petitioner ought to have been allowed.

J. V. Austin for the petitioner.

Cyril Dodd for the respondent.

The COURT (MATHEW, J., and GRANTHAM, J.) held that the returning officer was wrong in allowing the objection, that the prayer of the petitioner must be granted, and a new election held.

Solicitors: Mills & Bibby (Huddersfield), and Burn & Berridge, agents for Ramsden, Sykes & Ramsden (Huddersfield).

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Re THE MISSOURI STEAMSHIP COMPANY.

Ship—Contract of Affreightment—Conflict of Laws—Law of the Flag—'Lex loci contractus'—Bill of Lading—Special Exemption.

Appeal from decision of CHITTY, J., noted L. J. N. C. 1888, p. 42.

Sir W. Phillimore, Q.C., and *Carver* for the appellant.

Cohen, Q.C., and *F. Thompson* for the respondents.

Their LORDSHIPS dismissed the appeal.

Solicitors: Rowcliffes, Rawle & Co. for the appellant; Robins, Cameron & Kemm for the respondents.

Court of Appeal.
LORD ESHER, M.R.
LINDLEY, L.J.
LOPES, L.J.
May 3.

In re BROCKELBANK. *Ex parte* CREDITORS.

Bankruptcy—Order of Discharge—'In all cases'—Any Misdemeanour—Bankruptcy Discharge and Closure Act, 1887 (50 & 51 *Vict. c.* 66), *s.* 2, *subs.* 3.

Appeal of creditors against the order of Registrar Brougham granting the discharge of a bankrupt adjudicated on February 22, 1878, on a petition of June 20, 1877.

On June 5, 1882, the bankrupt was convicted of obtaining on September 24, 1880, certain goods by means of false pretences and with intent to defraud.

The registrar held that the conviction for obtaining goods by false pretences after the bankruptcy was not connected with the bankruptcy, and made the order.

Woolf for the appellants.

The debtor in person.

Their LORDSHIPS held that the proviso to subsection 3 of section 2 of the Bankruptcy Discharge and Closure Act, 1887, that the Court shall refuse the discharge of debtor adjudged bankrupt under the Bankruptcy Act, 1869, in all cases where the debtor has committed any misdemeanour under Part II. of the Debtors Act, 1869, is restricted to cases in a matter connected with or arising out of the bankruptcy.

Appeal dismissed.

Solicitor: C. A. Clulow for the appellants.

HIGH COURT OF JUSTICE.

Chancery Division.
CHITTY, J.
May 1.

In re THE 163RD STARR-BOWKETT BUILDING SOCIETY AND SABIN'S CONTRACT.

Vendor and Purchaser—Conditions of Sale—Right to Rescind—Unwilling.

Land was contracted to be sold under a condition which, after providing in the usual way for the time in which requisitions and objections to title were to be sent in, continued, 'in case the purchaser shall within the time

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aforesaid make any objection to or requisition on the title which the vendors shall be unable or unwilling to remove or comply with,' then the vendors may by notice in writing annul the contract.

The purchaser sent in his requisitions and objections in due course, and thereupon the vendors, who were the trustees of the society, passed a resolution to the effect that they were unwilling to comply with them, and without making any attempt to answer any of them served a formal notice on the purchaser annulling the contract, and stating that they were 'unwilling to remove or comply with the objections or requisitions on any of them.'

Byrne, Q.C., and *G. T. Millar* for the purchaser.

Romer, Q.C., and *George Henderson* for the vendors.

CHITTY, J., held that under the special form of the condition in question the right to rescind arose directly the requisitions were made; and that though the word 'unwilling' ought to be interpreted as 'reasonably unwilling,' yet in the absence of any evidence of caprice or *mala fides* he must assume that the conduct of the vendors was reasonable, and that the contract was therefore duly annulled.

Solicitors: Birt & Follett; Burgoyne, Watts & Co.

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Chancery Division. NORTH, J. May 4. } *In re* FITZGERALD.

Settlement — 'Next-of-kin in blood according to the Statutes of Distribution'—Exclusion of Widow.

Adjourned summons.

By a postnuptial settlement made in 1843 certain trust funds were settled by Richard Fitzgerald upon trust for himself for life, and on his death for his wife for her life, and on the death of the survivor for his children by his said wife. But if there should be no children, the trustees were to stand possessed of the trust funds in trust 'for the next-of-kin in blood of the said Richard Fitzgerald according to the statutes for the distribution of intestates' effects, and in the manner in which the same would have been distributed if he had died possessed thereof intestate.'

Richard Fitzgerald died in the lifetime of his wife without ever having had any children by her. His wife died in the year 1886.

After the death of Mrs. Fitzgerald the surviving trustee of the settlement paid the trust funds into Court, under the Trustee Relief Act, and this summons was taken out by the persons claiming the funds, to have the same distributed among the persons entitled thereto; and the question was raised whether, under the ultimate limitation in the settlement, the representative of the widow was entitled to share in the funds with the next-of-kin of the settlor.

B. B. Rogers for the next-of-kin.

Marcy for the representative of the widow.

Decimus Sturges for the surviving trustee.

NORTH, J., held, on the authority of *Kilner* v. *Leech*, 16 Law J. Rep. Chanc. 503; 10 Beav. 362, and *Worseley* v. *Johnson*, 3 Atkins, 758, that 'next-of-kin in blood' of a man did not include his wife. He said that the words 'and in the manner in which the same would have been distributed if he had died possessed thereof intestate' did not alter or enlarge the meaning of the words 'next-of-kin in blood,' and that consequently the representative of the widow could not share with the next-of-kin.

Solicitors: Miller, Smith & Bell for the widow; Sismey & Sismey for the representative of the widow; Wordsworth, Blake & Co. for the trustee.

Chancery Division. STIRLING, J. May 7. } *In re* DE BURGH LAWSON. DE BURGH LAWSON *v.* DE BURGH LAWSON.

Administration—Charge of Debts on Real Estate—Direction to Executors to pay Debts—Devise of Real Estate to Executors upon Trust.

The testatrix Mary De Burgh Lawson, the wife of Sir H. De Burgh Lawson, was at the time of her decease entitled under the will of her mother, Mary Stoddart, deceased, to a general power of appointment over a share in the collieries and property of the Bedlington Coal Company.

By her will, dated October 3, 1879, the testatrix directed her executrixes thereinafter named to pay all her just debts, funeral and testamentary expenses, and the expenses of proving her will, and in exercise of her power of appointment appointed her share in the Bedlington Coal Company to her daughters, Clara Alexandrina Wormald and Ada Mary Wormald De Burgh Lawson, upon trust to pay the income equally between all her children living at her death, and after the decease of the last survivor to sell the said share and divide the proceeds among such of her grandchildren as should be living at the death of the last survivor of her children; and she appointed her two said daughters executrixes of her will.

There was an action for the administration of the real and personal estate of the testatrix, and upon second further consideration the question was argued whether certain debts of the testatrix, which had been certified by the chief clerk, were charged upon the corpus of the testatrix's real estate.

Warrington for the plaintiff.

Farwell for the defendant.

Boome for other parties.

STIRLING, J., held that the case was not capable of being distinguished from *In re Tangueray; Willaume* to *Landau*, 51 Law J. Rep. Chanc. 434; L. R. 20 Chanc. Div. 479, and that the debts were a charge upon the corpus.

Solicitors: Crossman & Prichard; John Scaife & G. & W. Webb.

Queen's Bench Division. May 1. } CHISHOLM (APPELLANT) *v.* DOULTON (RESPONDENT).

Local Government—Metropolis—Smoke of Furnaces—Negligent Use of Furnace by Servant—Liability of Owner to Penalty—16 & 17 *Vict. c.* 128, *s.* 1.

Case stated by metropolitan police magistrate.

An information was laid against the respondent for negligently using a furnace employed by him on his trade premises, within the metropolis, so that the smoke arising from it was not effectually consumed, contrary to 16 & 17 Vict. c. 128, s. 1.

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It was proved that the respondent carried on business as a potter upon the premises; that black smoke issued from the furnace for ten minutes; that the furnace was constructed and arranged on the best-known principles for consuming its own smoke; and that the respondent took no personal part in the management of the furnaces, which were in charge of an efficient foreman whose duty it was to superintend the stokers. There was no negligence either on the part of the respondent or of the foreman in charge of the furnaces.

Scrutton, for the appellant, contended that the respondent was, on the facts, proved liable to a penalty for a breach of the section.

Channell, Q.C. (with *G. M. Freeman*), for the respondent, *contrà*.

The COURT (FIELD, J., and CAVE, J.) held that on the true construction of the Act the respondent could not in the absence of negligence on his part be rightly convicted.

Appeal dismissed.

Solicitors: Wontner & Sons for the appellant; Vandercom & Co. for the respondent.

Queen's Bench Division. May 2. } BARKER & SON *v.* HEMPSTEAD.

Practice—Costs—Action on Contract—Judgment under Order XIV. for 20l.—Trial of Issue as to Residue of Claim—Amount recovered under 50l.—Order LXV., rule 12—County Courts Act, 1888 (51 & 52 *Vict. c.* 43), *s.* 116.

Appeal from an order of MATHEW, J., at chambers, directing the taxing-master to review the taxation of the plaintiffs' bill of costs in the action.

The action was brought to recover 47*l.* 17*s.* 5*d.*, the balance of an account for goods sold and delivered.

On the plaintiffs' application for leave to sign judgment under Order XIV., the defendant consented to judgment for the full amount less 2*l.* 12*s.* 1*d.*, as to which the master gave leave to defend.

After joinder of issue, the action was, by consent, referred to an official referee, by whom judgment was given for the plaintiffs for 2*l.* 12*s.* 1*d.* and costs.

On taxation the defendant contended that, the action being founded on contract, the plaintiffs were, by Order LXV., rule 12, of the Supreme Court Rules, entitled to no more costs than they would have been entitled to if they had brought their action in a County Court.

The master overruled the objection, and held that under the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 116, the plaintiffs were entitled to costs on the High Court scale.

Mathew, J., having ordered the master to review the taxation, the plaintiffs appealed.

The County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 116, provides that 'if in any action founded on contract the plaintiff shall within twenty-one days after the service of the writ . . . obtain an order under Order XIV. of the Rules of the Supreme Court empowering him to enter judgment for 20*l.* or upwards, he shall be entitled to costs according to the scale for the time being in use in the Supreme Court.'

Sills for the plaintiffs.

Rose-Innes for the defendant.

The COURT (FIELD, J., and CAVE, J.), held that the plaintiff was entitled to costs on the High Court scale.

Appeal allowed.

Solicitors: J. H. Tyas & Huntington (for J. H. Bland, Nuneaton), for the plaintiff; Lewis & Churchman for the defendant.

Queen's Bench Division. May 7. } M'GRATH *v.* CARTWRIGHT.

Practice—County Courts Act, 1888—*Appeals from Inferior Courts—Judge's Notes—Duty of Suitor to obtain Notes to be used on Appeal—Supply of Copies of Notes for use of Judges Condition Precedent to Hearing Appeal*—51 & 52 *Vict. c.* 43, *s.* 121—*Rules of Supreme Court*, 1883—*Order LIX., rule* 13.

This was an appeal from the decision of the County Court judge of Sheffield in favour of the defendant. The plaintiff obtained a signed copy of the notes of the judge, but did not furnish any copies of such notes for the use of the High Court judges. Order LIX., rule 13, required the master of the Crown Office on the entry of an appeal from an inferior Court to apply on behalf of the High Court to the judge of the inferior Court for a copy of the notes of the evidence given, and for a statement of his judgment or finding on the question of law. But section 121 of the County Courts Act, 1888, provides that in appeals from inferior Courts any person party to the action may at his own expense obtain from the judge a copy of a note of any question of law requested to be made at the trial, and of the facts in evidence, and of the judge's decision, which copy shall be signed by the judge, and such signed copy shall be used and received at the hearing of the appeal.

Morton Smith for the plaintiff.

Anderton for the defendant.

The COURT (FIELD, J., and CAVE, J.) held that the effect of section 121 of the County Courts Act, 1888, was to repeal Order LIX., rule 13, and consequently it was no longer the duty of the master of the Crown Office to apply on behalf of the High Court to the judge of the inferior Court for a copy of his notes, but that it was the duty of one of the parties in the action to obtain such notes, and that it was a condition precedent to the hearing of the appeal that copies of such notes should be furnished for the use of the judges of the High Court.

Solicitors: B. Greaves (Sheffield) for the plaintiff; Kime & Hammond (for Wm. Buckhouse, Preston) for the defendant.

Queen's Bench Division. (*Magistrates' Case.*) May 8. } JESSE ELLIS & CO. *v.* HULSE.

Highways and Locomotives (*Amendment*) *Act*, 1878 (41 & 42 *Vict. c.* 77), *s.* 32—*License—Exemption—Locomotive used solely for Agricultural Purposes.*

Case stated by justices.

The appellants had been convicted of using a locomotive, of which they were the owners, upon a highway without having obtained a license required by a bye-law passed in pursuance of 41 & 42 Vict. c. 77, s. 32, which,

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however, exempted locomotives used solely for agricultural purposes. The locomotive in question was let for hire, but was only used for agricultural work.

Dickens for the appellants.

Meadows White, Q.C., and *Gore* for the respondent.

The COURT (FIELD, J., and CAVE, J.) quashed the conviction on the ground that, inasmuch as the locomotive was in fact used solely for agricultural purposes, it came within the exemption in the statute, notwithstanding that it was let for hire.

Appeal allowed.

Solicitors: W. C. Cripps & Son, Tunbridge Wells, for the appellants; Brennan, Maidstone, for the respondent.

Probate, Divorce, and Admiralty Division. May 7. } THE ECLIPSE.

Practice—Appeal from County Court—Motion Incidental to Appeal—Application to Single Judge—Judicature Act, 1873, *s.* 52—*Rules of the Supreme Court, Order LIX., rule* 17.

A motion incidental to an appeal from a County Court, not involving the decision of the appeal itself, may be heard and determined by a single judge, and need not be made to the Divisional Court.

Motion for leave to adduce further evidence at the hearing of an appeal from the City of London Court in a collision action.

Cohen, Q.C., and *Butler Aspinall* appeared for the appellants in support of motion.

Johnston Watson, for the respondents, took a preliminary objection that the motion should have been made to a Divisional Court, Judicature Act, 1873, s. 45.

Cohen, Q.C.: The application need not be made to a Divisional Court. Section 52 of the Judicature Act, 1873, provides that in any matter pending before the Court of Appeal a single judge may give any direction incidental thereto which does not involve the decision of the appeal. And that provision is extended by Order LIX., rule 17, to appeals from County Courts to the High Court.

Johnston Watson having replied,

BUTT, J., overruled the objection.

Solicitors: Oswald Clarkson for the appellants; Tatham, Oblein & Nash for the respondents.

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In re SALMON.
PRIEST *v.* UPPLEBY.

Practice—Appeal—Service of Notice of Appeal on Third Parties—Costs—Order LVIII., rule 2.

Appeal from KEKEWICH, J.

The plaintiff, as assignee of a beneficiary under a will, claimed to make the defendant Uppleby liable for a loss incurred on the realisation of an investment made by Uppleby while sole trustee, on the ground that the investment was improper. Uppleby contested the plaintiff's right, as he also claimed to be indemnified by third parties, whom he served with a third-party notice. The third parties appeared and delivered a defence.

Kekewich, J., having dismissed the action, the plaintiff appealed. The plaintiff did not serve notice of appeal upon the third parties, and they did not appear upon the appeal.

It was objected on behalf of Uppleby that the appellant ought to have brought the third parties before the Court.

Rule 2 of Order LVIII. provides as follows: 'The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just.'

Hall, Q.C., and *P. S. Stokes* for the plaintiff.

Warmington, Q.C., and *J. G. Wood* for the defendant Uppleby.

Decimus Sturges for other defendants.

The objection was overruled by the majority of the Court.

The MASTER OF THE ROLLS and FRY, L.J., held that the third parties were not persons directly affected by the appeal. It was for the defendant Uppleby to bring the third parties before the Court. His proper course was to have applied to the Court under rule 2 of Order LVIII. for leave to serve the third parties with notice of the appeal. Their lordships directed the case to stand over in order that the third parties might be served, the costs of the adjournment to be paid by the defendant Uppleby.

COTTON, L.J., differed from the rest of the Court except as to the necessity of bringing the third parties before the Court. In his lordship's view the case was not covered by the rules, but it was the duty of the appellant, independently of the rules, to bring before the Court all parties necessary for the hearing of the appeal. Assuming that rule 2 of Order LVIII. applied, the third parties were persons directly affected.

Solicitors: H. Hocombe for the plaintiff; Hicks & Son for the defendant Uppleby; Y. H. Bird for the other defendants.

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HIGH COURT OF JUSTICE.

Crown Case Reserved. Jan. 26. May 11. } REGINA *v.* TOLSON.

Bigamy—Bonâ fide and Reasonable Belief in Death of Husband or Wife—24 & 25 Vict. c. 100, *s.* 57.

Case stated by STEPHEN, J.

The prisoner was married on September 11, 1880.

On December 13, 1881, her husband deserted her. She and her father made inquiries about him, and learned from his elder brother and from general report that he had been lost in a vessel bound for America which went down with all hands on board.

On January 10, 1887, she went through the ceremony of marriage with another man.

In December, 1887, her first husband returned from America.

The learned judge directed the jury that a belief in good faith and on reasonable grounds that her husband was dead was not a defence to an indictment for bigamy.

The jury convicted the prisoner, stating, in answer to a question from the learned judge, that she in good faith and on reasonable grounds believed her husband to be dead at the time of her second marriage.

Henry for the prisoner.

No counsel appeared for the prosecution.

Their LORDSHIPS (LORD COLERIDGE, C.J., HAWKINS, J., STEPHEN, J., CAVE, J., DAY, J., SMITH, J., WILLS, J., GRANTHAM, J., CHARLES, J.—DENMAN, J., POLLOCK, B., FIELD, J., HUDDLESTON, B., and MANISTY, J., *dissentientibus*) held that the direction of the learned judge was wrong, and that the conviction must be quashed.

Conviction quashed.

Solicitor: Atter, Whitehaven, for the prisoner.

Crown Case Reserved. May 11. } REGINA *v.* GORDON.

False Pretences—Money Lender—Promissory Note for 100*l. obtained on Representation that* 100*l. would be Advanced—False Representation of Existing Fact.*

This was a case reserved by LORD COLERIDGE, C.J.

The prosecutor (Brown), a farmer, seeing an advertisement in a county paper that prisoner was prepared to lend money on advantageous terms, applied to him for a loan of 100*l.* for two years. The prisoner agreed to lend this sum upon the prosecutor and his son signing a document promising to pay 100*l.* in two years by quarterly instalments. The prisoner charged a fee of 10*s.* 6*d.* for the expense of going over to the farm to look at the stock. The prosecutor and his son signed the promissory note and handed it to the prisoner, who then gave them not 100*l.*, but 60*l.* in exchange, telling them that 40*l.* was the charge he made for the advance. Upon this the prosecutor sought to return the 60*l.* Ultimately an indictment containing five counts was preferred against the prisoner—the first for obtaining 10*s.* 6*d.* by false pretences; the second for obtaining the promissory note for 100*l.* by false pretences; and the fourth for inducing the prosecutor and his son to make the promissory note for 100*l.* by the false pretence that the prisoner was prepared to pay them or one of them 100*l.* The third and fifth counts were abandoned: but the jury found the prisoner guilty upon the others.

Lockwood, Q.C., and *Harington*, for the prisoner, contended that there had been no false representation of an existing fact.

Amphlett, for the prosecution, was not called upon to argue.

The COURT (LORD COLERIDGE, C.J., MATHEW, J., WILLS, J., CAVE, J., and GRANTHAM, J.) held that the prisoner had induced the prosecutor to believe that he would give him 100*l.* upon his signing the note, and that the prisoner had never intended to do so; that by pretending that the 100*l* was ready to be handed to the prosecutor upon his signing the note the prisoner had made a false representation of an existing fact. The conviction could accordingly be maintained upon the fourth Court of the indictment.

Conviction affirmed.

Solicitors: W. A. Tree, Worcester, for the prosecution; Prior, Church & Adams (agents for Matthews, Worcester) for the prisoner.

Chancery Division. KAY, J. May 8. } TUCK *v.* THE SOUTHERN COUNTIES DEPOSIT BANK.

Bill of Sale—'True copy'—Wrong Date—Unregistered Deed of Gift—Subsequent Registered Bill of Sale—'Security for money'—Delaying Creditors—Defence—Bill of Sale Acts, 1878, *ss.* 4, 8; *and* 1882, *s.* 3—13 *Eliz. c.* 5.

On September 8, 1885, T. G. Tuck assigned his household furniture to his wife absolutely. The deed was not registered as a bill of sale. On April 5, 1888, he executed a bill of sale of the same furniture to the defendants, as security for a loan. This bill of sale was registered as such, but the copy required by section 10, subsection 2, of the Bill of Sale Act, 1878, to be filed with the registrar stated the date as 'March' instead of 'April,' though the affidavit under that section stated the correct date. On July 31, 1888, Tuck died, and the defendants seized the furniture. The widow then brought this action for an injunction and damages, claiming that the furniture belonged to her under the deed of gift. The defence was that the defendants were entitled to the possession of the furniture under their bill of sale. This was the trial of the action.

J. G. Butcher, for the plaintiff, contended that the defendants' bill of sale was bad, inasmuch as the copy filed was not a 'true copy' within section 10, subsection 2, of the Act of 1878.

Arnold White, for the defendants, contended that error in the copy filed was a mere clerical error and would deceive nobody; that the plaintiff's deed of gift was a 'bill of sale' within section 4 of the Act of 1878, and therefore required registration, and that, being unregistered, it was void as against the defendants, and also that under 13 Eliz. c. 5 the deed of gift was void as tending to delay, hinder, or defeat creditors.

Butcher in reply.

KAY, J., without deciding the question whether the requirements of the Act of 1878 as to filing a 'true copy' had been substantially complied with, held that the defendants' claim failed on two other sufficient

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grounds—first, that the deed of gift was not a 'security for the payment of money,' and therefore was not void as against the defendants under the Bills of Sale Acts, though unregistered; and secondly, that the defendants were not at liberty now to raise the defence of the statute 13 Eliz. c. 5, since they were not defending as creditors, but simply as persons entitled to the possession of certain specific property, and had not raised the defence of the statute of Elizabeth by their pleadings, and that if there was such a ground of defence it should have been raised by counterclaim or by a separate action by the defendants on behalf of themselves and all other creditors, and that they could not be allowed to raise that defence now. The plaintiff was entitled to a judgment for an injunction, an inquiry as to damages, and to the costs of the action.

Solicitors: Foss & Ledsam for the plaintiff; Prince & Ayres for the defendants.

Chancery Division. STIRLING, J. May 2, 3, 7. } *In re* MILLER. CHAPMAN *v.* MILLER.

Practice—Evidence—Chief Clerk's Certificate—Summons to Vary—Non-admissibility of Evidence not Entered—Certificate.

In this administration action the plaintiff, a solicitor, had carried in a claim for 44*l.* 16*s.* 3*d.* in respect of a bill of costs, which he alleged had been incurred by the testator during his lifetime. The chief clerk had allowed the claim, and the certificate contained the following statement: 'The evidence produced on the account consists of the affidavit of the defendant and Arthur John Taylor, filed June 5, 1888.' In this affidavit the defendant, who was the administratrix of the deceased, simply stated that she was unable to say whether the claim was well-founded or not. The defendant took out a summons to vary the certificate. The plaintiff contended that the affidavit referred to in the certificate was not the only evidence in support of the claim, and that upon the hearing of the summons the judge ought to take into consideration further evidence which had been adduced upon the summons.

Graham-Hastings, Q.C., and *Beddall* for the plaintiff.

Pearson, Q.C., and *Farwell* for the defendant.

STIRLING, J., held that the only evidence which he could properly look at upon the summons was that which was stated by the chief clerk as that upon which he founded his conclusion—*i.e.* the affidavit mentioned in the certificate. Upon that evidence his lordship came to the conclusion that the finding of the chief clerk was not warranted, and that the proper course was to set aside the certificate and refer the matter back again to chambers in order that it might be fully investigated. In the present case, however, fresh evidence had been adduced upon the summons, and the plaintiff had been cross-examined, and, as all the materials for the decision of the matter were now before the Court, his lordship thought he was not bound simply to send it back to chambers, but that judgment ought to be exercised. Under these circumstances, and for that reason alone, he considered the fresh evidence, and upon it disallowed the plaintiff's claim.

Solicitors: Davidson & Morris; R. Chapman.

Chancery Division. STIRLING, J. May 4, 11. } *In re* ST. LUKE'S VESTRY, MIDDLESEX, AND THE SCHOOL BOARD FOR LONDON.

Lands Clauses Consolidation Act, 1845, *s.* 80—*Compulsory Purchase—'Wilful refusal'—Costs.*

In May, 1882, the vestry entered into an agreement with the promoters of the Regent's Canal, City, and Docks Railway Company for a sale to them of certain lands belonging to the vestry. The company afterwards obtained their Act of Parliament, and on March 19, 1883, ratified and adopted the agreement.

In 1884 the School Board for London served the vestry with notice to treat for a portion of the lands agreed to be sold to the railway company. The value of the land for which the School Board desired to treat was duly assessed, and the board required the vestry to show title to the property. The vestry, however, were advised by their solicitor that, in order to avoid prejudicing their position with regard to their contract with the railway company, it would be better not to furnish an abstract, but to leave the School Board to take possession under the provisions of the Lands Clauses Act.

The School Board accordingly paid the purchase-money into Court, and upon a petition by the vestry to obtain payment out the question arose whether there had been on the part of the vestry a 'wilful refusal' to show title within the meaning of section 80 of the Lands Clauses Act, and consequently whether the School Board were relieved from paying the costs.

W. Pearson, Q.C., and *Bradford* for the vestry.

Kirby for the School Board.

STIRLING, J., said that the construction of the Act was now settled beyond his power to deal with it. The question was what meaning was to be given to the word 'wilful' in section 80 of the Act. That question came before the Court in 1848 in the case of *Ex parte Bradshaw*, 17 Law J. Rep. Chanc. 454; 16 Sim. 174, when Shadwell, V.C., said that the Legislature meant by the words 'wilful refusal' a refusal arising from an exercise of mere will or caprice, and not from an exercise of reason. The same question came before Lord Langdale in *Re The Windsor, Staines, &c., Railway Act*, 12 Beav. 522, and before Kinderaley, V.C., in the case of *In re The Commissioners of Ryde*, 26 Law J. Rep. Chanc. 299, in both of which a similar construction was put upon the words. Those cases had never been dissented from, and at this distance of time it was not competent for his lordship to put any other construction upon the words 'wilful refusal' in this Act of Parliament. His lordship then considered the circumstances of the present case, and came to the conclusion that there had been no 'wilful refusal' by the vestry within the meaning of the Act, and consequently held that the School Board must pay the costs according to the Act.

Solicitors: Wild, Browne & Wild for the vestry; Gedge, Kirby & Millett for the School Board.

Bankruptcy. May 14. } *Re* LANE. *Ex parte* GAZE.

Bankruptcy Act, 1883 (46 & 47 *Vict. c.* 52), *ss.* 4(*c*), 48—*Fraudulent Preference—Payment to revive Statute-barred Debt.*

Appeal by trustee against an order of a County Court judge admitting proofs.

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J. L., in 1862, bequeathed 3,000*l.* in trust for J. F. for life, after his death such sum to be divided between his children W. F. and A. L. In 1876 the beneficiaries agreed that the money should be paid to J. F., to be advanced to the bankrupt, the husband of A. L. In 1879 the bankrupt ceased paying interest. In 1888 the bankrupt, being in difficulties, sent a sum of 5*l.* to J. F. with the expressed intention of reviving the debt of 3,000*l.*, having regard to his possible bankruptcy. The trustee rejected the proof, considering that the payment was fraudulent and void, and that it did not revive the debt. The County Court judge held that it did not amount to a fraudulent preference within section 48 of the Bankruptcy Act, 1883, and that the proofs must be admitted.

R. Vaughan Williams, Q.C., and *Poyser* for the trustee.

Yate-Lee for the respondents.

The COURT (FIELD, J., and CAVE, J.) held that the intention of the bankrupt being to revive a real debt, and not to prefer one creditor before others, the appeal must be allowed.

Solicitors: Bavin & Daynes (Norwich) for the trustee; S. Linay & Co. (Norwich) for the respondents.

Queen's Bench Division. April 30. } *Re* LAMB.

Solicitor and Client—Bill of Costs—Taxation—Probate Duty.

The taxing-master having allowed a solicitor to enter in his bill of costs against a client a sum paid for probate duty, the client appealed to MATHEW, J., in chambers, who affirmed the master's decision. The taxing-master of the Probate Division reported that it was the invariable practice in that division to include the amount paid for probate duty in the bill of costs and not in the cash account.

Woollett for the appellant.

Gore for the respondent.

The COURT (POLLOCK, B., and MANISTY, J.), held that the amount paid for probate duty was rightly included in the bill of costs.

Solicitors: W. Brewer, for the appellant; Palmer & Bull for the respondents.

Queen's Bench Division. May 2. } MARTON (PETITIONER) *v.* GORRILL (RESPONDENT).

County Council—Nomination Paper—Name of Electoral Division omitted in the Heading for Form of Nomination.

By a special case, stated for the opinion of the Court pursuant to an order, it appeared that the petitioner was a candidate at an election for the office of county councillor for the Lonsdale South electoral division for the county of Lancaster; that nine nomination papers nominating the petitioner were delivered. These nine nomination papers were in every respect complete, with the exception that in none of them was the name of the electoral division inserted. The space at the top of each of the printed forms had been left blank—thus: 'Lancashire. Local Government Act, 1888. Election of County Councillor for the Electoral Division of———.' The deputy-returning officer allowed an objection in writing by the respondent to the petitioner's nomination on the ground that the division was not specified, decided that the nine nomination papers of the petitioner were invalid, and published the name of the respondent as elected. Against this decision the petitioner had presented a petition. The question for the Court was whether the decision of the deputy-returning officer was right.

Austin for the petition.

R. S. Wright for the respondent.

The COURT (MATHEW, J., and GRANTHAM, J.) held that the deputy-returning officer was wrong in his decision, and that the petition must be allowed.

Solicitors: Crowders & Vizard (agents for Clark, Oglethorpe & Son, Lancaster), for the petitioner; T. R. Hargreaves (agent for Johnson & Tilly, Lancaster), for the respondent.

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May 21.

VAGLIANO BROTHERS v. THE GOVERNOR AND COMPANY OF THE BANK OF ENGLAND.

Banker—Bill of Exchange—Forged Instrument—Negligence—Bills of Exchange Act, 1882 (45 & 46 *Vict. c.* 61), *s.* 7, *subs.* 3.

Appeal by the defendants from a judgment of CHARLES, J. (reported 58 Law J. Rep. Q. B. 27).

The Attorney-General (Sir R. E. Webster, Q.C.), H. D. Greene, Q.C., and *R. G. Arbuthnott* for the defendants.

Sir C. Russell, Q.C., Finlay, Q.C., and *Hollams* for plaintiffs.

Their LORDSHIPS (LORD ESHER, M.R., *diss.*) dismissed the appeal.

Court of Appeal.
LINDLEY, L.J.
LOPES, L.J.
May 17.

FRY v. MOORE.

Practice—Writ—Defendant out of Jurisdiction—Substituted Service—Nullity or Irregularity—Order IX., rule 2.

Appeal of the defendant from the order of FIELD, J., and CAVE, J., refusing an order to set aside the writ of summons and all subsequent proceedings in the action.

W. S. Robson for the defendant.

Macaskie for the plaintiff.

Their LORDSHIPS held that substituted service under Order IX., rule 2, of a writ of summons, in Form 1, issued against a defendant out of jurisdiction is an irregularity; but it does not annul a judgment entered upon default of appearance, if the defendant has taken important proceedings in the action inconsistent with its nullity or has otherwise waived the irregularity.

Field v. *Bennett*, 56 Law J. Rep. Q. B. 89, approved.

Solicitors: John Greenfield for the plaintiff; A. W. Mills for the defendant.

Court of Appeal.
LORD ESHER, M.R.
COTTON, L.J.
FRY, L.J.
May 18.

STOKELL v. NIVEN.

Statute of Frauds—Agreement for Lease—Names of Parties—Signature by Tenant—20 Car. II. c. 3, *s.* 4.

Appeal from decision of KAY, J., noted *ante*, at p. 30.

Renshaw, Q.C., and *Davenport* for the appellant.

Marten, Q.C., and *W. R. E. Barker*, for the respondent, were not called upon.

Their LORDSHIPS dismissed the appeal, with costs.

Solicitors: Iliffe, Henlay & Sweet (agents for Mabane, South Shields, Durham), for appellant; Bell, Brodrick & Gray, for respondent.

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HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
May 17.
TUCK *v.* THE SOUTHERN COUNTIES DEPOSIT BANK.

Practice—Judgment—Fund in Court—Order for Payment out—Appeal—Stay of Execution pending Appeal—'Special Circumstances'—Affidavit—Rules of Court, 1883, *Order LVIII., rule* 16.

Motion.

Muir Mackenzie, for the defendants in this case, noted *ante*, p. 66, applied for a stay of execution, pending an appeal, so far as related to the order for payment out of the 50*l.* which had been paid into Court by the plaintiff.

Butcher, for the plaintiff, argued that a stay could only be granted if special circumstances were shown by affidavit ('Annual Practice,' p. 785; Rules of Court, Order LVIII., rule 16). No such affidavit had been filed.

KAY, J., in refusing the application with costs, said that it was a common practice to grant an application like the present if made at the time of judgment, when the judge had the facts fresh before him; but, if made subsequently, special circumstances must be shown by affidavit.

Solicitors: Prince & Ayres; Foss & Ledsam.

Chancery Division.
STIRLING, J.
May 15.
DOERING *v.* DOERING.

Trust—Defaulting Trustee—Derivative beneficial Interest—Mortgage of Trustee's Interest—Priority.

J. A. E. Doering, by his will dated in 1865, appointed his wife, the defendant, Mrs. Doering, and a son trustees and executors of his will, and after directing his trustees to pay the income of his residuary estate to his widow during life or widowhood, he directed them to hold the same upon trust for the benefit of his children equally.

The testator died in 1866, and the will was proved by Mrs. Doering alone. In 1872 a second trustee was appointed. In 1875 an administration action was commenced, and in July, 1876, judgment was given in the action, directing the usual accounts and inquiries.

In December, 1879, the chief clerk certified that 3,141*l.* was due from Mrs. Doering to the testator's estate.

By an order made in July, 1880, on further consideration the trustees were directed to transfer into Court (as they duly did) to the credit of the action, 'loss on trust funds account,' 1,598*l.* Mrs. Doering died insolvent in 1883.

In 1877 Mrs. Doering had acquired an interest in the shares to which two of her sons, Frederick and Arthur, were entitled under the will. She was entitled as mortgagee of Frederick's share for 2,500*l.*; and she was entitled to Arthur's share as mortgagee for 300*l.* and 250*l.* respectively, and also as assignee of the ultimate equity of redemption.

By an indenture of November 21, 1877, Mrs. Doering, after reciting that she was entitled under the testator's will to a life interest in the residue, and also that she was absolutely entitled to the two shares above referred to, mortgaged all her interest under the will to Colonel Fyler to secure the sum of 900*l.* and interest.

Colonel Fyler claimed to have his mortgage paid out of the fund in Court in priority to the claims of the estate of the testator. A summons was taken out by the plaintiffs in the action for the purpose (*inter alia*) of determining this question.

Pearson, Q.C., and *Warrington* for the plaintiffs.

Graham Hastings, Q.C., and *Dauney* for Colonel Fyler.

Buckley, Q.C., and *Edward Beaumont, Swinfen Eady, Tremlett, Hornell, H. L. Fraser*, and *F. H. Law* for other parties.

STIRLING, J., held that the case fell within the principle of *Jacubs* v. *Rylance*, 43 Law J. Rep. Chanc. 280; L. R. 17 Eq. 341, and that consequently Colonel Fyler was not entitled to be paid in priority to the estate. It was admitted that if Mrs. Doering had become entitled directly under the will she could have claimed nothing while she was in default, and that her assignee could not stand in any better position, inasmuch as the Court treated a defaulting trustee as having received his share in anticipation. The same principle applied where, as in the present case, the trustee was entitled not directly but derivatively.

Solicitors: Oehme, Summerhays & Co.; Eardley-Holt, Hulbert & Smith; Vandercom & Co.; Freshfields & Williams.

Chancery Division.
STIRLING, J.
May 15.
KINNAIRD *v.* TROLLOPE.

Mortgage—Legal Tender—Interest—Disputing Right to Redeem—Costs.

Further consideration and summons.

In 1870 the defendants mortgaged No. 11 Hereford Gardens to the plaintiffs, to secure 12,000*l.* and interest, and the mortgage contained the usual covenants for payment of principal and interest, and a proviso for redemption in the usual form. In 1872 they sold the equity of redemption to the Earl of Glasgow for 9,100*l.*, and in 1875 he gave a further charge upon the property to secure 8,000*l.* and interest. Shortly before November, 1886, the plaintiffs applied to the defendants for payment of the 12,000*l.* and an arrear of interest then due. The defendants expressed their willingness to pay upon having a transfer of the plaintiffs' mortgage for 12,000*l.*; but the plaintiffs denied the right of the defendants to redeem, except upon payment of both sums, the 12,000*l.* and the 8,000*l.* In November, 1886, the plaintiffs commenced an action in the Queen's Bench Division against the defendants upon the covenant to pay the 12,000*l.* and interest. On November 18, 1886, the defendants took out a summons to stay the action on their paying, within the month, the 12,000*l.* and interest, and asking that the mortgage of 1870 should be transferred to them. Ultimately a special case was settled, and this was transferred to STIRLING, J., who held that the plaintiffs were only entitled to judgment on the terms of reconveying the property to the defendants, subject to such equity of redemption as might be subsisting in any person other than the defendants. The case is reported in 57 Law J. Rep. Chanc. 905. Subsequently accounts were directed to ascertain the amount of principal and interest due to the plaintiffs on their mortgage. The chief clerk found that the plaintiffs were entitled to interest up to the date of actual payment. The defendants took out a summons to vary the certificate by disallowing all interest after November 18, 1886, the date of the summons to stay proceedings, and

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upon the further consideration they raised the question whether the plaintiffs, having unsuccessfully contested their right to redeem except on payment of both sums, ought not to be deprived of the costs to which as mortgagees they would otherwise be entitled.

Buckley, Q.C., and *Horsburgh* for the defendants.

Graham Hastings, Q.C., and *Frank Evans* for the plaintiffs.

STIRLING, J., held that, in order to stop interest running, it was necessary, first, that there should be an actual tender of the money; secondly, that from the date of the tender the mortgagor should always keep the money ready; and he dismissed the summons. Upon the question of costs he said that, although the claim of the plaintiffs was practically a denial of the defendants' right to redeem, they had not set up a purely frivolous and vexatious case. The costs of and consequent upon the summons to stay the action from the time when it was referred by the master to the Divisional Court to the time when the special case was disposed of would be disallowed, the defendants paying all the other costs of the action.

Solicitors: Trollope & Winckworth; Burrows, Barnes & Pears.

Bankruptcy. May 21. *In re* PARFITT. *Ex parte* THE BOARD OF TRADE.

Bankruptcy—Costs—Taxation—Solicitor's Charge for Conveyancing—Bankruptcy Rules, 1886, *rule* 112, *and Appendix II.—Scale of Solicitors' Costs, No. VII., General Regulations, rules* 1, 2.

Motion to review the taxing-master's taxation of costs on the ground that, as the estimated assets of the debtor did not exceed 300*l.*, the solicitor's remuneration for conveyancing business, which had been allowed in accordance with the General Order under the Solicitors' Remuneration Act, 1881, ought to have been allowed on a lower scale—namely, at three-fifths of the amount allowed.

The Bankruptcy Rules, 1886, rule 112, provides: '(1) The scale of costs set forth in the appendix and the regulations contained in such scale shall, subject to these Rules, apply to the taxation and allowance of costs and charges in all proceedings under the Act and these Rules; (2) subject to the provisions of No. 1 of the scale of costs, where the estimated assets of the debtor do not exceed the sum of 300*l.*, a lower scale of solicitor's costs shall be allowed in all proceedings under the Act in which costs are payable out of the estate—namely, three-fifths of the charges ordinarily allowed, disbursements being added.' And by Appendix II. (Scale of Solicitors' Costs), No. VII., General Regulations: '(1) All costs, save as in this scale provided, which shall be properly incurred under the provisions of the Act or Rules, shall be allowed on the "lower scale" in Appendix N to the Rules of the Supreme Court, 1883.' '(2) In respect of business connected with sales, purchases, leases, mortgages, and other matters of conveyancing, and in respect of other business not being business transacted in Court or in chambers, and not being otherwise contentious business, the solicitor's remuneration shall be regulated by the General Order under the Solicitors' Remuneration Act, 1881, for the time being in force.'

Muir Mackenzie for the Board of Trade.

Ashton Cross for the trustee.

CAVE, J., held that it was not intended that the second paragraph of rule 112 should apply to cases in which the scale of costs is by rule 2 of the General Regulations regulated by the General Order under the Solicitors' Remuneration Act, 1881, so as, in the case of bankruptcy estates not exceeding 300*l.*, to cut down a second time by two-fifths the reduced charges allowed in small transactions by that Order, and that the taxation ought not to be reviewed.

Motion dismissed.

Solicitors: Solicitor to the Board of Trade; W. R. Davies Dolgelly, for the trustee.

Queen's Bench Division. May 3, 6. STEVENS *v.* THE JUSTICES OF THE SHARNBROOK DIVISION OF BEDFORD.

Licensing—Conviction of Licensed Person—Authority to Owner to Carry on Business—Application by New Tenant for Renewal—9 Geo. IV. c. 61, *s.* 14—37 & 38 *Vict. c.* 49, *s.* 15.

Special case stated by the Quarter Sessions of Bedfordshire.

In 1887 a license in respect of a publichouse at Riseley was granted to one Ellis Nutter. In January, 1888, Nutter was convicted of felony, and in February the landlord, having taken possession, applied for authority to carry on the business until the next special licensing sessions on March 6, 1888, but it was granted till the following sessions on April 6, 1888. He placed the appellant in the house as manager. On April 6 the appellant, having become tenant, applied for a transfer of the license to himself, but the application was refused. On September 7, 1888, the appellant applied to the general annual licensing sessions for a renewal of the license granted to Nutter, but this application was also refused; and upon appeal the Court of Quarter Sessions affirmed the decision of the justices, subject to the present case.

Paterson and *Lindsell*, for the appellant, contended that, upon the true construction of 37 & 38 Vict. c. 49, s. 15, and 9 Geo. IV. c. 61, s. 14, the appellant was right in applying for a renewal of the original license to Nutter instead of a new license.

H. D. Bonsey and *H. M. Monckton*, for the respondents, were not called upon.

The COURT (FIELD, J., and CAVE, J.) held that the application should have been for a new license, and not for a renewal. Under section 15 of 37 & 38 Vict. c. 49, the appellant might have applied at the 'next' special sessions for a renewal; but, having failed to do so, he could afterwards only apply for a new license.

Appeal dismissed.

Solicitors: Graham & Chater (for Mitchell & Webb, Bedford), for the appellant; Garrard & Allen, Olney, for the respondents.

Queen's Bench Division. May 9. LEA *v.* CHARRINGTON.

False Imprisonment—Issue of Warrant for Arrest under Criminal Law Amendment Act, 1885, *s.* 10—*Judicial Act.*

Section 10 of the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), provides that, 'If it appears to any justice of the peace on information made before

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him on oath by . . . . any person who, in the opinion of the justice, is *bonâ fide* acting in the interest of any woman or girl, that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person in any place within the jurisdiction of such justice, such justice may issue a warrant authorising any person named therein to search for . . . . such woman or girl,' &c. The justice of the peace issuing such warrant may by the same or any other warrant cause any person accused of so unlawfully detaining such woman or girl to be apprehended and brought before a justice and proceedings to be taken for punishing such person according to law.

In an action for false imprisonment and malicious prosecution the statement of claim alleged that the defendant falsely and maliciously appeared before a police magistrate and laid an information against the plaintiff for unlawfully detaining for immoral purposes a certain girl against her will, on which said information a warrant was issued for the arrest of the plaintiff. At the trial before GRANTHAM, J., and a jury, the plaintiff proved that the defendant appeared before the magistrate, and, upon a statement which had been made to the defendant by a third party, laid the information complained of, upon which the magistrate issued a search warrant and a warrant for the arrest of the plaintiff.

Morten and *Gill* for the plaintiff.

M'Call for the defendant.

The COURT (POLLOCK, B., and MANISTY, J.) held that the case came within the decision in *Hope* v. *Evered*, 55 Law J. Rep. M. C. 146; that the act of the magistrate in issuing the warrant for the arrest was a judicial act, and an answer to the action.

Solicitors: G. Kebbell for the plaintiff; C. V. Young & Co. for the defendant.

Queen's Bench Division. May 15. } HORNSEY LOCAL BOARD *v.* MONARCH INVESTMENT BUILDING SOCIETY AND OTHERS.

Public Health—Local Government Act, 1858 (21 & 22 *Vict. c.* 98), *s.* 63—*Public Health Act*, 1875 (38 & 39 *Vict. c.* 55), *s.* 257—*Apportioned Expenses—Charge on the Premises—Limitation of Action—Real Property Limitation Act*, 1874 (37 & 38 *Vict. c.* 58), *s.* 8.

By section 63 of the Local Government Act, 1858, and section 257 of the Public Health Act, 1875, expenses incurred by the local authority, for the repayment of which the owner of the premises for or in respect of which the same are incurred is liable, are declared to be, until recovery, a charge upon the premises in respect of which they are incurred.

A local authority having, in 1875, carried out certain paving expenses in accordance with the provisions of the Public Health Acts, the expenses were apportioned in 1885, and in 1886 notice of the apportionment was served upon the owners of the premises and demands for payments made.

In 1889, no payment having been made by the defendant, one of such owners, the Board applied in the County Court for a declaration that the apportionment was a charge upon the premises, and for a direction to sell the premises to give effect to the said charge.

Macmorran for the plaintiffs.

M. Lush for the defendants.

The COURT (MATHEW, J., and GRANTHAM, J.) held that the expenses became a charge upon the premises at the date when they were incurred, and that, therefore, the time limited by section 8 of the Real Property Limitation Act, 1874, ran from the date of the completion of the work, and not from the date of the apportionment, and that the plaintiff's remedy against the premises was barred.

Appeal allowed.

Solicitors: A. C. Tatham for the local board; W. H. Withall & Co. for the defendants.

Probate, Divorce, and Admiralty Division. May 20. } ELLAM *v.* ELLAM.

Petition for Divorce—Leave Granted by Court to give Evidence by Affidavit—Special Circumstances.

This was a wife's petition for a divorce on the ground of her husband's desertion and adultery. The desertion was proved, and also the fact that the respondent had gone through the ceremony of marriage with another woman in America, but there was no evidence as to the subsequent cohabitation between the parties to the bigamous marriage.

BUTT, J., held that, under the statute, the mere proof that the ceremony of bigamous marriage had been performed was insufficient, and that there must be substantive evidence of the adultery. On the application of counsel, however, proof of the adultery was allowed to be completed by affidavit of two responsible persons in America, but it was to be clearly understood that the Court would not readily yield to such applications, and that this was only granted under the exceptional circumstances of the case.

Bargrave Deane for the petitioner.

Solicitors: Godfrey, Rhodes, Firth & Co. (agents for T. W. Piercy, Huddersfield).

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Table of Cases.

HOUSE OF LORDS.

House of Lords.
Nov. 30, Dec. 3, 4, 1888.
May 27, 1889.
} HAMILTON AND ANOTHER *v.* BAKER (THE SARA).

Maritime Lien—Disbursements by Master for Necessaries—Admiralty Court Act, 1861 (24 & 25 *Vict.* c. 10), *s.* 10.

This was an appeal from a decision of the Court of Appeal (reported 56 Law J. Rep. P. D. & A. 100), which affirmed one of Butt, J.

Finlay, Q.C., and *A. E. Nelson*, for the appellant.

Sir W. Phillimore and *J. Gorell Barnes, Q.C.*, for the respondent.

Cur. adv. vult.

Their LORDSHIPS (LORD HALSBURY, L.C., LORD WATSON, and LORD MACNAGHTEN) held that 24 & 25 Vict. c. 10, s. 10, has not conferred on the master of a ship a maritime lien for necessary disbursements.

Decision of the Court of Appeal reversed, with costs.

Solicitors: Lowless & Co. for the appellants; Ingledew, Ince & Colt for the respondents.

House of Lords.
March 7, 8.
June 4.
} ANDREW KNOWLES & SONS (LIM.) AND OTHERS *v.* THE LANCASHIRE AND YORKSHIRE RAILWAY COMPANY.

Canal Company — Right of Support — Mines and Minerals—Restriction on Working by Owner.

This was an appeal from a decision of the Court of Appeal (reported 57 Law J. Rep. Q. B. 150) which affirmed one of CAVE, J.

The Attorney-General (*Sir R. E. Webster, Q.C.*), *Sir H. Davey, Q.C.*, *Henn Collins, Q.C.*, and *John Dixon* for the appellant.

Sir C. Russell, Q.C., *W. C. Gully, Q.C.*, and *Smyly* for the respondents.

Cur. adv. vult.

Their LORDSHIPS (LORD HALSBURY, L.C., LORD WATSON, LORD BRAMWELL, LORD FITZGERALD, and LORD MACNAGHTEN) dismissed the appeal, with costs.

Solicitors: Rowcliffes, Rawle & Co. (for Fullagar & Hulton, Bolton), for the appellants; Clarke, Woodcock & Ryland (for Moorhouse, Manchester) for the respondents

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COURT OF APPEAL.

Court of Appeal.
LORD ESHER, M.R.
COTTON, L.J.
FRY, L.J.
May 24.

In re EBSWORTH AND TIDEY'S CONTRACT.

Vendor and Purchaser — Estate 'pur autre vie' — Restrictive Covenant—Mortgage to Trustees of Building Society—Society wound up—Sale by some of Liquidators—Companies Act, 1862 (25 & 26 *Vict. c.* 89), *ss.* 95, 199, 203.

Appeal from decision of NORTH, J.

On June 4, 1866, certain property was mortgaged in fee to the trustees of a building society, and it was provided by the deed that, in case of default by the mortgagor, the trustees for the time being were to hold the property on trust, if and when required by the directors of the society to sell the property. The receipts of the trustees were to be good discharges for the purchase-money.

On November 12, 1872, an order was made by Malins, V.C., for winding up the society, which was an unregistered company. On December 16, 1872, he made an order appointing six of the directors of the society official liquidators, and declared that all the acts required or authorised by the Companies Act to be done by official liquidators might be done by any two of them. On January 13, 1873, he made a further order that 'all such property real and personal including all interest, claims, and rights, as to and out of property real and personal including things in action, as may belong to or be vested in this society, or to or in any person or persons in trust for or on behalf of the said society do vest in the official liquidators of the society; and it is ordered that the said official liquidators be at liberty to exercise any of the powers conferred on them by section 95 of the Companies Act, 1862, without the sanction or interference of the Court in pursuance of section 95.'

On May 9, 1877, two of the liquidators conveyed the property discharged from the mortgage to a predecessor in title of the present vendor. The present vendor agreed to sell an estate *pur autre vie* to the present purchaser.

A summons was taken out under the Vendor and Purchaser Act, 1874, raising, amongst others, the following objections to the title of the vendor (1) that the property was subjective to a restrictive covenant with regard to building which had not been disclosed; (2) that the power of sale could only have been exercised by the trustees of the society, and that two of the liquidators could not convey a legal estate which was vested in six.

North, J., overruled these objections. The purchaser appealed.

Cozens-Hardy, Q.C., and *P. F. Wheeler* for appellant.

Everitt, Q.C., and *T. C. Wright* for the respondent.

Their LORDSHIPS held (1) that, as after the purchase was completed the purchaser could apply to the Court under the Settled Estates Act, 1877, for a sale of the property, and that on a sale of the property it would realise less by reason of the restrictive covenant, the purchaser's objection was a good one; (2) that the liquidators could exercise the power of sale on the mortgage; but held by COTTON, L.J., and FRY, L.J. (LORD ESHER, M.R., *dissentiente*), that two of the liquidators could not convey the legal estate vested in six.

Appeal allowed.

Solicitors: E. Dean for appellant; Terrell, Atkinson & Winstanley for respondent.

Court of Appeal.
LORD ESHER, M.R.
COTTON, L.J.
FRY, L.J.
May 28, 29.

In re FAWCETT AND HOLMES' CONTRACT.

Vendor and Purchaser—Restrictive Covenant—Assigns not mentioned—Misdescription in Particulars—Compensation Clause.

Appeal from a decision of NORTH, J., in chambers.

The trustees of the late George Fawcett put up for sale by auction certain property which had belonged to him at Wakefield. One Holmes bid for and was declared the purchaser of Lot 1, which was described in the particulars as follows: 'All that messuage or dwelling-house known as Quay House, situate in Teale Street, Wakefield, with the buildings, yard, stables, and premises as lately in the occupation of George Fawcett, and containing 1,372 square yards.' The purchaser objected to the title delivered, on the ground that the conveyance to Fawcett contained a restrictive covenant by him against building. This covenant in the conveyance was not expressed as binding on his assigns, whereas other covenants entered into by him were so expressed. The purchaser took a further objection that the particulars had misdescribed the property in stating that it contained 1,372 square yards, whereas it contained only 1,033.

The thirteenth condition of sale provided that 'the property is believed and shall be taken to be correctly described; but if any error, or misstatement, or omission in the posters, plans, or particulars, or in the special or these general conditions be discovered, the same shall not annul the same, but if pointed out before completion of the purchase, and not otherwise, compensation shall be allowed by the vendor or purchaser as the case may require, and the amount of compensation shall be fixed by arbitration.' The vendors took out a summons for the determination of the questions raised by the purchaser, and North, J., held that the covenant against building by Fawcett was a personal covenant, and did not bind his assigns, and that the misdescription in the particulars was one which the purchaser could be compensated for.

The purchaser appealed.

Giffard, Q.C., and *Methold* for the appellant.

Dunham for the respondent.

Their LORDSHIPS held (1) that, upon the true construction of the conveyance to Fawcett, the covenant by him not to build was a personal covenant, and did not run with the land, and could not prevent the purchaser from building. (2) That the misdescription in the particulars did not go to a substantial and material point, so far affecting the subject-matter of the contract that it might reasonably be supposed that, but for that misdescription, the purchaser might never have entered into the contract, and that therefore the compensation clause applied, and the purchaser must fulfil his con-

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tract, the vendor paying him compensation, and dismissed the appeal (*Flight* v. *Booth*, 1 Bing. 370; 4 Law J. Rep. C. P. 66, approved).

Appeal dismissed.

Solicitors: Emmet, Son & Stubbs for the appellant; J. T. Watson, agent for B. W. Kemp, Wakefield, for the respondent.

Court of Appeal.
LORD ESHER, M.R.
COTTON, L.J.
FRY, L.J.
May 29, 31.

Re THE PORTUGUESE CONSOLIDATED COPPER MINES (LIM.).

Company—Certificate of Register—'Quorum' of Directors—Irregular Appointments—Invalid Meeting—Invalid Allotment.

Appeal from a decision of NORTH, J., noted *ante*, p. 51.

Rigby, Q.C., H. R. Buckley, Q.C., and *W. Baker* for appellants.

Higgins, Q.C., and *Farwell*, for respondents, were not called upon.

Their LORDSHIPS held that the directors had not had notice of the meeting of October 24, and that it was therefore invalid, and dismissed the appeal.

Solicitors: Burn & Berridge for appellants; Stretton, Hilliard & Co. for respondent.

Court of Appeal.
LORD ESHER, M.R.
COTTON, L.J.
FRY, L.J.
May 31. June 1.

In re MEDLAND.
ELAND *v.* MEDLAND.

Practice—Originating Summons—Question as to calling in Mortgage—One Trustee against Co-trustee—Costs—Jurisdiction—Rules of Supreme Court, 1883, *Order LV., rules* 3 (*g*), 5; *Order LXV., rule* 1.

One of the trustees of a will took out an originating summons against his two co-trustees as defendants, asking for the determination of the question whether the trustees ought to take any, and, if any, what, steps to call in, or otherwise with respect to, certain mortgage securities, being part of the investments representing a sum of 10,000*l.* held by the trustees on trusts declared by the will. One of the defendants was tenant-for-life of the fund, the other defendant was entitled to one moiety of the fund in remainder, and the defendants were two out of the three trustees of the person entitled to the other moiety in remainder.

NORTH, J., directed an inquiry in chambers what ought to be done with the mortgages, but declined to make any order as to costs on the ground that he had no jurisdiction to make the order unless all the beneficiaries were before the Court.

The plaintiff appealed.

Higgins, Q.C., and *Vaughan Hawkins* for the appellant.

Cozens-Hardy, Q.C., and *Hannen* for the respondents.

Their LORDSHIPS held that the summons was properly taken out, under Order LV., rule 3 (*g*), for the determination of a question arising in the administration of an estate; that the summons had been served on the person or one of the persons whose rights were sought to be affected, as required by rule 5 of the same order; and that the costs of the summons were within the discretion of the judges under Order LXV., rule 1, and the learned judge had jurisdiction, therefore, to deal with the costs either at the hearing or at some future time, and without saying that under no circumstances would it be right for a judge to deal with the costs until after the inquiry, as a general rule it was better to reserve the costs until after the result of the inquiry. The order of North, J., must be modified by adding a direction that all parties should be at liberty to apply in chambers as to costs. The costs of all parties on the appeal to be allowed out of the fund.

Solicitors: Palmer, Eland & Nettleship for the appellant; Hopgood & Dowson for the respondents.

Court of Appeal.
LINDLEY, L.J.
LOPES, L.J.
June 1.

JAMES *v.* JAMES AND BENDALL.

Arbitrator—Alleged Mistake in Law—Revocation of Submission—3 & 4 Wm. IV. c. 42, s. 39.

Appeal of Bendall from the decision of DENMAN, J., and STEPHEN, J., reported 58 Law J. Rep. Q. B. 300.

Atkinson, Q.C., and *T. Terrell* for the appellant.

Gore for the plaintiff.

Their LORDSHIPS dismissed the appeal on the ground that, as all matters in difference were referred to the arbitrator and, in the course of the arbitration, he decided one point in dispute at the request of the parties before giving his award, they ought not, in the exercise of the discretion given by the statute, to allow a dissatisfied party to revoke; Lindley, L.J., observing that the case of *The East and West India Docks Company* v. *Kirk and Randall*, 57 Law J. Rep. Q. B. 295, did not, in his opinion, lay down any proposition opposed to the practice of the Court or applicable to the general run of cases, but was decided under exceptional circumstances when any other course would have led to enormous expense.

Appeal dismissed.

Solicitors: Peacock & Goddard (agents for Eaton, Evans & Williams, Haverfordwest) for the plaintiff; Bridges, Sawtell & Co. (agents for Bendall, Newmarket), for the appellant.

Court of Appeal.
LORD ESHER, M.R.
COTTON, L.J.
FRY, L.J.
June 8.

In re CAWLEY & CO. (LIM.). *Ex parte* HALLETT.

Company—Transfer—Registration—Order of Business—Calls—Validity.

Appeal from a decision of CHITTY, J., noted *ante*, p. 46.

W. B. Hallett, who was a shareholder and director of the company, sold 2,000 shares to a Mr. Jones for 80*l.* at a time when he knew that certain creditors of the company were pressing for their money, and that the unpaid capital of the company was likely to be called up within a very short time.

The transfer was executed on December 15, and was lodged with the secretary for registration on the morning of the 18th. At this time no money was due upon the shares in respect of any call. On the afternoon of

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the 18th a board meeting was held, and several transfers were presented for registration, but the directors proceeded to pass a resolution calling up the unpaid capital of the company before dealing with the transfers. The resolution did not fix any day for payment of the proposed call, and no day was fixed until January 17, 1889. The articles of the company did not confer upon the directors any discretion to refuse registration except in a case where the shareholder was indebted to the company. Hallett applied, under section 35 of the Companies Act, 1862, for a declaration that the transfer ought to have been registered before the resolution for calling up the unpaid capital and for the rectification of the register accordingly. Chitty, J., refused the application on the ground that the directors were entitled to transact the business of the meeting in the order they thought fit.

Hallett appealed.

Romer, Q.C., and *Maidlow* for the appellant.

Maclean, Q.C., and *M'Laren* for the respondents.

Their LORDSHIPS allowed the appeal. In the first place, Hallett not being indebted to the company at the date when the transfers were handed in to the proper officer for registration, the directors had no power to decline to register the transfer, or to delay registration until they had made a call; secondly, the resolution was not in itself a call, as no time or place of payment had been fixed; thirdly, Hallett, although a director, was not precluded from transferring his shares in order to escape liability at a time when he knew that a call was imminent.

Solicitors: Lickorish & Bellard for appellants; Blewett & Tyler for respondents.

HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
May 9.
BLAKEY *v.* LATHAM.

Practice—Costs—Set-off—Different Actions—Solicitor's Lien—Rules of Supreme Court, 1883, *Order LXV., rule* 14.

Motion.

The Court has power, under Order LXV., rule 14, to set-off costs or damages, although they may have arisen in different actions.

This was a patent action, which Kay, J., had dismissed with costs. The plaintiffs appealed, but the appeal was dismissed with costs. Previously to this action the plaintiffs obtained judgment in a trade-mark action against the defendants, who appealed, but their appeal was dismissed with costs. Certain proceedings taken by the plaintiffs in the trade-mark action were allowed, with costs to be paid by the defendants. The defendants' solicitor in the patent action served a notice on the plaintiffs claiming a lien for his costs of appeal in that action.

The plaintiffs now moved to be at liberty, notwithstanding the solicitor's lien claimed in the patent action, to set-off the costs due by them in the patent action against the costs due to them from the defendants in the trade-mark action.

Waddy, Q.C., S. Woolf, Fillan, and *C. E. Jenkins* for the parties.

KAY, J., said that, apart from authority, he did not see why, under Order LXV., rule 14, the set-off should not be allowed, notwithstanding the solicitor's lien, and although they were different actions. The rule referred to damages as well as to costs, and damages could not be obtained by both parties in the same action. But he was bound by the decision of the Court of Appeal in *Edwards* v. *Hope*, 54 Law J. Rep. Q. B. 379; L. R. 14 Q. B. Div. 922, to decide that the right of set-off did not interrupt the solicitor's lien.

Solicitors: E. Salaman; T. Conolly; A. V. Green.

Chancery Division.
KAY, J.
May 18.
In re CARTWRIGHT.
AVIS *v.* NEWMAN.

Permissive Waste—Tenant for Life—Remainderman—Statute of Marlbridge (52 *Henry III. c.* 23)*—Statute of Gloucester* (6 *Edw. I. c.* 5).

From the time of the Statutes of Marlbridge and Gloucester to the present time there is no authority to show that damages had ever been recovered by a remainderman against a tenant for life for permissive waste. Such authority as exists is against such a claim.

Ingpen and *W. C. Druce* for the parties.

Solicitors: Rogers & Clarkson; Druces & Attlee.

Chancery Division.
KAY, J.
May 27.
Re FRISBY. ALLISON *v.* FRISBY.

Principal and Surety—Mortgage—Statute of Limitations—Joint and several Covenant by Mortgagor and Surety — Co-Contractor — Payment by Mortgagor—Real Property Limitation Act, 1874, *s.* 8*—Mercantile Law Amendment Act*, 1856, *s.* 14.

When a mortgagor and surety jointly and severally covenanted with the mortgagee to pay the mortgage debt and interest, and interest was paid by the mortgagor within a period less than the twelve years limited by the Real Property Limitation Act, 1874,

HELD: That the mortgagee was entitled to rank as creditor against the estate of the surety, as the debt was kept alive by the payment within the statutory period of interest by the principal debtor, and that the surety was not a 'co-contractor' within the meaning of section 14 of the Mercantile Law Amendment Act, 1856, by which payment by one contractor does not prevent the Statutes of Limitation from running in favour of his co-contractor or co-debtor.

Renshaw, Q.C., and *Townsend*, and *Marten, Q.C.*, and *Percival* for the parties.

Solicitors: Beaumont, Son & Rigden for Maurice Brown, Peterborough; Clarke, Rawlins & Co. for Percival & Son, Peterborough.

Chancery Division.
KAY, J.
May 30.
June 4.
Re BALLANCE.
BALLANCE *v.* LANPHIER.

Will—Construction—Direction that Residue shall sink into Residue—Direction to Settle—Executory Trust.

Testator by his will gave a sum of bank annuities to trustees in trust for his daughter Eliza for life, and

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after her death for her husband and children, and in default of children directed the same to 'sink into and form part of my general residuary estate, and be applied and disposed of as hereinafter mentioned.' The testator made a similar disposition by reference in favour of his daughter Mary, her husband and children. He then gave his residuary estate between his children equally, 'the shares of daughters to be paid to the same trustees respectively, and to be settled upon the same trusts' as their respective sums of bank annuities.

The testator left seven children surviving him, including Mary, who afterwards died unmarried.

This was an originating summons, and the question was whether Mary's one-seventh share of residue was undisposed of or was given over to the other residuary legatees.

Marten, Q.C., Renshaw, Q.C., Chadwyck Healey, and *St. John Clerke* for the parties.

KAY, J., said that the difficulty arose from the authorities; but in the present case the gift of residue in favour of the daughters was in the nature of an executory trust, and if carried out by a settlement the obvious modification would be to limit the share of any daughter who died without issue, so as to go over to the other residuary legatees, excluding the deceased daughter. This distinguished the case from *Humble* v. *Shore*, 7 Hare, 247, and Mary's share must go amongst the other residuary legatees, exclusive of Mary.

Solicitors for all parties: C. A. Bannister.

Chancery Division. CHITTY, J. May 24. } ROBINSON *v.* GALLAND.

Sequestration—Lunatic not so found—Rules of Supreme Court, 1883, *Order XLIII., rule* 6.

The plaintiffs in this case had obtained judgment against the defendant for a considerable sum of money, and afterwards applied for and obtained an order for payment by the defendant of such sum within seven days after service of the order. Since the date of the order the defendant had become of unsound mind, and the order was duly served, under Order IX., rule 5, and Order LXVII., rule 5, upon the medical man in whose care he was residing at an asylum. The plaintiffs having moved for a writ of sequestration under Order XLIII., rule 6, on the ground that the defendant had 'refused or neglected to obey the order,' the motion was adjourned for the appointment of a guardian *ad litem*.

It was now submitted by the guardian *ad litem* that the plaintiff was not entitled to a writ of sequestration, inasmuch as the defendant, being irresponsible for his acts, could not be said either to have 'refused' or to have 'neglected' within the meaning of the rule.

Romer, Q.C., and *Nalder* for the plaintiffs.

Warrington for the guardian *ad litem* of the defendant.

CHITTY, J., said that the Rules of 1883 had made provision for bringing actions and maintaining proceedings against persons of unsound mind. Although it was true that the defendant was not capable of refusing, yet there had been neglect by him within the meaning of the rule. The defendant's unsoundness of mind did not debar the plaintiffs' right to recover what they were justly entitled to under the judgment, and therefore the plaintiffs were entitled to sequestration.

Solicitors: Collyer, Bristow, Withers, Russell & Hill (for Bell & Ingoldby, Louth); Iliffe, Henry & Sweet.

Chancery Division. STIRLING, J. May 15, 21, 22, 23. } *In re* THE BRITON MEDICAL AND GENERAL LIFE ASSOCIATION (LIM.). *Ex parte* LITTLETON.

Company—Shares—Register—Right of Transferee to have his Name removed—Irregularity in Proceedings of Company—Non-compliance with Deed of Settlement—Shares Void or Voidable—Estoppel.

The company was formed in 1854 under the Act 7 & 8 Vict. c. 110. The applicant was the holder of 100 shares in the company, which had been transferred to him as a purchaser in April, 1880, and in respect of which his name had, since that date, been upon the register.

He had received dividends and paid calls upon the shares. He alleged that in 1888 he first discovered that the meetings at which the issue of the shares, of which he was the holder, had been authorised were not properly constituted, and that in several material particulars the requirements of the deed of settlement of the company had not been complied with, and on these grounds he contended that the shares were void, and that he was entitled to have his name removed from the register in respect of them. In 1886 a winding-up petition had been presented against the company, but subsequently a scheme for the reduction of the company's contracts was confirmed by the Court in the presence of all parties. The application was resisted on the ground that the shares were issued under circumstances which rendered that issue voidable only; that the issue had since been acquiesced in by all parties; and, even if not, that the rights of policy-holders and creditors had intervened, so that it could not now be held that the shares were void.

W. Pearson, Q.C., and *A. Young* for the applicant.

Graham Hastings, Q.C., Chadwyck Healey, and *Danckwerts* for the company.

STIRLING, J., held that, assuming there had been irregularities, these had been acquiesced in by all parties, and, the rights of third parties having intervened, the shares could not now be treated as nullities. The application must therefore be dismissed.

Solicitors: Alfred Howard; Rowcliffes & Co.

Chancery Division. STIRLING, J. May 30. } *In re* BURNABY.

Settled Estate — Title Deeds — Custody — Equitable Tenant-for-Life—Trustees.

This was a summons taken out by C. E. Burnaby, who was entitled as equitable tenant-for-life under the will of his brother to a freehold estate at Errington, to obtain the direction of the Court as to the custody of the title deeds.

He was also a trustee and executor of the will jointly with two other persons.

On the death of the testator in 1880 he was let into

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possession of the Errington Estate, and the title deeds were delivered to him. In 1881 part of the estate was mortgaged, with the sanction of the Court, under the Settled Estates Act, 1877, in order to raise a sum of 7,000*l.* with a view to the laying out of the estate for building purposes, and the title deeds relating to the mortgaged part were handed to the mortgagees.

The estate was laid out for building purposes, and various portions were sold under the Settled Land Act, the two other trustees having been appointed trustees for the purposes of the Act. In 1885 the mortgage was paid off out of moneys arising from these sales. The title deeds were claimed by Burnaby and by his co-trustees, and eventually they were deposited in a bank, under protest from Burnaby, in the joint names of the three as trustees of the will.

Beale, Q.C., and *Borthwick*, for the summons, relied upon *Lady Langdale* v. *Briggs*, 8 De G. M. & G. 391.

Graham Hastings, Q.C., and *Nalder* for the co-trustees.

STIRLING, J., made a declaration that Burnaby was entitled to the custody of the title deeds upon his undertaking not to part with them without the consent of the trustees, and to produce them to the other trustees upon all reasonable occasions.

Solicitors: Rye, Eyre & Willoughby, for the summons; Collyer, Bristow, Withers, Russell & Hill, agents for Ingram & Moore, Leicester, for the respondents.

Chancery Division.
KEKEWICH, J.
June 1.
CHURCHER *v.* MARTIN.

Charitable Trust—Land—Void Deed—Mortmain Act, 9 *Geo. II. c.* 36, *s.* 3—*Possession on behalf of Charity—Possession by Settlor jointly with Co-trustees—Resulting Trust.*

The plaintiffs claimed certain property in the hands of trustees on the ground, which was not disputed, that the trust deed, dated January 22, 1868, whereby Emmanuel Churcher conveyed the property in trust for a charity did not comply with the provisions of the Mortmain Act, 9 Geo. II. c. 36, with regard to enrolment.

The trustees, one of whom was Emmanuel Churcher himself, entered into possession of the property shortly after the execution of the deed, and had remained in uninterrupted possession, on behalf of the charity, for upwards of twelve years.

The plaintiffs, who were the real representatives of Emmanuel Churcher, contended that such possession must be taken to have been for the benefit of the true *cestui que trust*—that was to say, the present real representatives of Emmanuel Churcher, on the ground that the deed operated to pass the legal estate to the trustees, but that they held upon an express trust in favour of the settlor, necessarily resulting from the failure of the declared trust in favour of the charity.

The plaintiffs also contended that the possession of the trustees whilst Emmanuel Churcher was one of them could not be regarded as a possession adverse to his title.

Neville, Q.C., and *A. Young* for the plaintiffs.

Warmington, Q.C., and *G. B. Freeman* for the trustees.

Ingle Joyce for the Attorney-General.

KEKEWICH, J., held that the deed was wholly inoperative and passed no estate or interest either at law or in equity; that there was no express trust in favour of a person claiming on the footing of the failure of the charitable trust; that the possession of the trustees must be regarded as adverse to and exclusive of any possession by Emmanuel Churcher as beneficial owner; and consequently that the plaintiffs' case failed.

Solicitors: H. H. Ewer for N. Donnithorne, Fareham; Sole, Turner & Knight for Blake, Reed & Lapthorn; Hare & Co.

Chancery Division.
KEKEWICH, J.
June 1.
BUTCHER *v.* NASH.

Vendor and Purchaser—Specific Performance—Sale of Land—Agreement in Writing—Description of Vendor—Statute of Frauds.

The plaintiff claimed specific performance by the defendant of an agreement dated June 1, 1887, to purchase land at Chesham, Bucks. The agreement was contained in a memorandum annexed to particulars and conditions of sale, and was signed by Vernon & Son, auctioneers, as agents for C. Cheese, the solicitor for the vendor. The conditions stated that 'the vendor' was 'a trustee for sale,' and the party selling was also variously referred to in the particulars as 'owner' and 'vendor.' It was admitted that the plaintiff was not a trustee for sale but was absolutely entitled to the property, and that Cheese had no interest in it. The defendant resisted specific performance.

Warmington, Q.C., and *Upjohn* for the plaintiff.

Barber, Q.C., and *R. F. Norton* for the defendant.

KEKEWICH, J., held that there was no sufficient description in the contract of the plaintiff as vendor, and that the action must fail.

Solicitors: Clement, Cheese & Green; Ridsdale & Co. for Francis & How, Chesham.

Queen's Bench Division.
Feb. 2.
May 18.
THE VESTRY OF ST. MARY, ISLINGTON (APPELLANTS) *v.* GOODMAN (RESPONDENT).

Metropolis Improvement Act, 1817 (57 *Geo. III. c. xxix.*), *s.* 72—*Metropolitan Buildings Act*, 1855 (18 & 19 *Vict. c.* 122), *s.* 36, *subs.* 2—*Projection into Street—Shop Front—Width of Street over Thirty feet—Projection found by Vestry Inconvenient and Incommodious to Public—Order for Removal.*

Appeal by way of case stated from the decision of a metropolitan police magistrate dismissing a summons brought by the appellants against the respondent for the non-removal of certain portions of his shop front which projected six inches into the public highway; the street in which the shop was of greater width than thirty feet.

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The appellants, as the proper parochial authority, found that such projection was inconvenient and incommodious to passengers, under section 72 of the Metropolis Improvement Act, 1817, which section gives power to the parochial authorities to remove all projections from the fronts of houses abutting upon any street or public place that in their judgment are inconvenient and incommodious to passengers using such street, &c.; or to give notice to the owner to remove such projections. The appellants gave notice to the respondent to remove the projection and summoned him for disobedience to their order.

The respondent contended that he was protected by section 26 (subsection 2) of 18 & 19 Vict. c. 122, which provides that 'in any street or alley of a width greater than thirty feet any shop front may project ten inches and no more.' The magistrate was of opinion that he was so protected, and dismissed the summons.

R. V. Williams, Q.C., and *J. Austin* for the appellants.

Horace Browne for the respondent.

The COURT (DENMAN, J., HAWKINS, J., and LORD COLERIDGE, C.J., dissenting) held that the magistrate was wrong, and that the respondent was not protected by section 26 (subsection 2) of 18 & 19 Vict. c. 122, but came under the general provisions of 57 Geo. III. c. xxix.

Solicitors: W. Lewis for the appellants; W. Stevens Lewis, for the respondent.

Queen's Bench Division. May 29. } HOME *v.* FOUNTAIN.

Practice—Charging Order—Form of Order—Lunacy—Discretion of Lords Justices—1 & 2 *Vict. c.* 110, *s.* 14; 3 & 4 *Vict. c.* 82, *s.* 1.

Appeal from chambers.

Plaintiff had obtained a judgment against the debtor for 61*l.* 12*s.* 6*d.* The debtor shortly afterwards was found a lunatic. By order of the lords justices in lunacy certain furniture and effects of the lunatic were sold, and the proceeds invested in the sum of 3,204*l.* 2*s.* 8*d.* in the name of the paymaster-general of the Chancery Division. This sum was entered in the books of the Bank of England to the credit of the paymaster-general '*re* John Fountain, a person of unsound mind.' The plaintiff applied for a charging order.

MATHEW, J., in chambers, made the following order: 'It is ordered that so much of the defendant's interest in the fund so standing as aforesaid stand charged with the payment of the above-mentioned amount due on the said payment as the said justices sitting in lunacy may deem applicable to the payment of the said judgment debt, and costs to be in the discretion of the lords justices.'

The plaintiff appealed on the ground that he was entitled to have a charge for the full amount of the judgment debt.

Hextall for the plaintiff.

Swinfen Eady for the committee of the lunatic's estate.

The COURT (FIELD, J., and CAVE, J.) held that there was no jurisdiction to make a charging order leaving the amount of the charge to be settled by lords justices, but that the plaintiff was entitled to have an order charging so much of the fund as the judge making the order should think fit, and that the order should be varied by making it a charge on 70*l.* of the fund.

Solicitors: Warriner & Finch (for F. Stone, Derby), for the judgment creditor; Aldridge, Thorn & Morris for the committee.

Queen's Bench Division. Nov. 17, 20, 1888. June 1, 1889. } REGINA *v.* THE LORD BISHOP OF LONDON.

Church and Clergy—Public Worship—Reredos—Unlawful Images or Sculptured Subjects in Cathedral Church—Representation of Inhabitants of Diocese—Discretion of Bishop to entertain Representation—Public Worship Regulation Act, 1874 (37 & 38 *Vict. c.* 85), *ss.* 8, 9.

An order *nisi* had been granted in this case calling upon the Bishop of London to show cause why a writ of *mandamus* should not issue directing him to transmit a copy of the representation of John Derby Allcroft and three other complainants, dated May 4, 1888, to the persons complained of—namely, the Dean and Chapter of St. Paul's, and proceed thereon further in accordance with Public Worship Regulation Act, 1874. The representation was that the Dean and Chapter had introduced into the Cathedral church, and set up upon the altar-piece or reredos therein, an image or sculptured subject representing our Lord upon the cross, constructed so as to have the appearance of such an altar crucifix as was used in the Church of England before the Reformation, and so as to answer the purposes for which such a crucifix was intended. Also, that they had introduced and set up upon the altar-piece or reredos an image or sculptured subject representing the Blessed Virgin Mary with the Child in her arms. That both these images or sculptured subjects tended to encourage ideas and devotions of an unauthorised and superstitious kind, and were unlawful, and were respectively additions to the fabric, ornaments, or furniture of the Church, and were decorations forbidden by law.

To this representation the Bishop replied that, having considered the whole of the circumstances attending it, he was of opinion that proceedings thereon should not be taken. His lordship stated, among other reasons for this decision, that the main principle at issue had already been decided in the Exeter Case (*Phillpotts* v. *Boyd*, 44 Law J. Rep. Ecc. 44; 6 Law Rep. P. C. 435), where the reredos showed a figure of our Lord in the act of ascending to heaven, in a conspicuous position immediately above the communion-table, and that this had been held to be lawfully erected.

The Attorney-General (*Sir R. Webster, Q.C.*), *Jeune, Q.C.*, and *Coward*, showed cause.

Sir Henry James, Q.C., Moulton, Q.C., and *Danckwerts* in support. *Cur. adv. vult.*

On June 1, 1889, the COURT (LORD COLERIDGE, C.J., POLLOCK, B., and MANISTY, J.), Pollock, B., *dissentiente*, held that the order for *mandamus* must be made absolute, subject to appeal.

Order absolute.

Solicitors: Wainwright & Bailey for the promoters; Lee, Bolton & Lee for the Bishop.

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Probate, Divorce, and Admiralty Division. May 28. } GILL *v.* GILL.

Divorce—Leave to Proceed without Co-respondent—Wife's Confession only Evidence of Adultery—20 & 21 Vict. c. 85, s. 28.

This was an application to dispense with a co-respondent on the ground that the only evidence in the case was a confession by the wife. There was no doubt as to the alleged co-respondent's identity.

Bargrave Deane for the petitioner.

Middleton, as *amicus curiæ*, referred to *Jenkings* v. *Jenkings*, 36 Law J. Rep. P. D. & A. 48; L. R. 1 P. D. 330.

BUTT, J.: This case is directly in point, and I must therefore follow it, though I disagree with the decision, and I would not have done it myself having regard to the words of the Act.

Solicitors for the petitioner: Lee, Ockerby & Everington.

Probate, Divorce, and Admiralty Division. May 28. } KNESON *v.* LUXMOORE. W. J. LUXMOORE AND OTHERS INTERVENING.

Solicitor—Charging Order—'Property Recovered' or 'Preserved'—23 & 24 Vict. c. 127, s. 28.

This was an appeal from BUTT, J., in chambers to rescind a charging order on property recovered in the action made in favour of Captain Luxmoore's solicitor, one of the interveners in the suit.

The plaintiffs, as executors, had propounded a will and codicil of Captain Luxmoore's father, probate of the codicil being opposed by the testator's daughter, the defendant. Under the will Captain Luxmoore took no benefit; but under the codicil he took a legacy and the residuary estate.

Captain Luxmoore, who was an undischarged bankrupt, was allowed to intervene in the suit, and later his trustees in bankruptcy also obtained permission to intervene.

The Court pronounced in favour of both will and codicil, and Captain Luxmoore's solicitor obtained a charging order, under 23 & 24 Vict. c. 127, s. 28, on the legacy and residuary estate left to his client as property recovered or preserved in the action. From this order the trustees appealed.

Kisch for the trustees in bankruptcy of Captain Luxmoore.

Bargrave Deane, for the respondent, Captain Luxmoore's solicitor, cited *Greer* v. *Young*, 52 Law J. Rep. Chanc. 915; L. R. 24 Chanc. Div. 545.

BUTT, J.: I am of opinion the order made by me in chambers must be set aside: it was made without full knowledge of the circumstances. The facts in this case do not bring it under the decision in *Greer* v. *Young*. Captain Luxmoore's solicitor must have known he could not touch a penny of the money till all his creditors had been satisfied. Here the trustees in bankruptcy rightly intervened, propounded the codicil, and recovered the money as assets of Captain Luxmoore for the benefit of his creditors. It is not true to say they are taking the sum as property recovered or preserved by the exertions of Captain Luxmoore's solicitors. The order must be rescinded, with costs.

Solicitors: Beyfus & Beyfus for the trustees; Wilkins & Fanshawe for the solicitor to Captain Luxmoore.

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Table of Cases.

HOUSE OF LORDS.

House of Lords. March 11, 12, 13. — REICHEL (PAUPER) *v.* THE BISHOP OF OXFORD AND OTHERS.

Benefice—Resignation—Acceptance—Condition—Validity.

This was an appeal from a decision of the Court of Appeal (reported 56 Law J. Rep. Chanc. 1023), which affirmed one of NORTH, J.

The appellant in person.

Mackarness, for the respondents, was not called upon.

Cur. adv. vult.

Their LORDSHIPS (LORD HALSBURY, L.C., LORD WATSON, LORD BRAMWELL, LORD FITZGERALD, and LORD MACNAGHTEN) dismissed the appeal.

Solicitors: Oswald J. Reichel in person; Cunliffes & Davenport (for Davenport, Oxford) for the respondents.

COURT OF APPEAL.

Court of Appeal. LINDLEY, L.J. LOPES, L.J. June 7. — SPINCER *v.* WATTS AND OTHERS.

Practice—Discontinuance—Costs—'Proceeding in the Action'—Order XXVI., rule 1.

Appeal of the defendant, H. J. Watts, from the refusal of POLLOCK, B., and MANISTY, J., to review the disallowance by a district registrar of his costs of the action and his counter-claim on the ground that he was not entitled to any costs.

The claim against the appellant was as drawer and endorser of a bill of exchange of which two other defendants were acceptors. These defendants paid into Court the full amount of the claim, and on the same day the appellant by his solicitor delivered a statement of defence and a counter-claim for costs due to him as a solicitor from the plaintiff, whereupon the plaintiff paid the amount counter-claimed into Court, which the appellant accepted. Lastly, the plaintiff gave notice of discontinuance to the appellant.

C. C. Scott for the appellant.

Gye for the plaintiff.

Their LORDSHIPS held that accepting money paid into Court and paying money into Court in answer to a counter-claim are not proceedings in an action taken by a plaintiff, who gives notice of discontinuance, so as to render it ineffectual to give the defendant his costs. The 'proceeding in the action' referred to in Order XXVI., rule 1, means a proceeding for continuing the action.

Solicitors: G. J. T. Barrett for appellant; F. J. & G. J. Braikenridge for plaintiff.

Court of Appeal. COTTON, L.J. BOWEN, L.J. FRY, L.J. June 18, 19. — *Re* SALMON'S WILL. PRIEST *v.* UPPLEBY.

Trustee—Investment—Liability—Notice to Trustee before Realisation of Security.

Appeal from decision of KEKEWICH, J., noted *ante*, at p. 40.

S. Hall, Q.C., and *P. S. Stokes* for the appellant.

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Warmington, Q.C., and *J. G. Wood* for the old trustee.

Decimus Sturges for the new trustees.

Their LORDSHIPS held that the investment on mortgage made by the old trustee was not a prudent one, and that he was liable to make good the loss occasioned by that investment; and that it was not necessary for the new trustees to give him notice before they realised the security, and reversed the decision of Kekewich, J.

HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
May 31.
EARDLEY *v.* KNIGHT.

Mortgagor and Mortgagee—Foreclosure Action—Costs—Costs added to Security—Interest on Costs.

A mortgagor brought an action against his mortgagee to set aside the mortgage. The mortgagee counterclaimed for foreclosure. The action was dismissed, and judgment given for foreclosure. The mortgagor appealed, but the appeal was dismissed with costs, which was ordered to be added to the mortgagee's security. In taking the account the chief clerk allowed interest on the taxed costs under the original judgment from the date of the judgment, and also interest on the taxed costs of appeal from the date of the order of the Court of Appeal.

Dunham and *Vernon R. Smith* for the parties.

KAY, J., disallowed interest altogether on the costs of the trial before the judge of first instance. But as the order of the Court of Appeal was equivalent to charging the costs of the appeal on the mortgaged estates, following *Lippard* v. *Ricketts*, 41 Law J. Rep. Chanc. 575; L. R. 14 Eq. 291, he allowed interest on the costs of appeal, but only from the date of the taxing-master's certificate.

Solicitors: H. Tyrrell & Son; G. H. Carthew.

Chancery Division.
KAY, J.
June 25.
In re STEPHENS.
WARBURTON *v.* STEPHENS.

Statute of Limitations—Creditor—Devise of Real and Personal Estate for Payment of Debts—Lapse of more than Six but less than Twelve Years—Remedy against Real Estate—37 & 38 Vict. c. 57, s. 8.

This was an originating summons taken out by the executor of a trustee of the will of F. R. Stephens asking that the claim of the defendant might be adjudicated on by the judge, and that, in default of the defendant substantiating his claim within a time to be named for that purpose, the plaintiff might be at liberty to distribute the estate of the testator without regard to the defendant's claim.

The defendant, in answer to advertisements by the executor, had sent in a claim as a creditor of the testator. The executor did not admit the claim, and no steps being taken by the defendant ultimately took out this summons.

By his will the testator gave all his property, real and personal, to his executors and trustees, in trust to sell and convert the same, and after payment thereout of his debts, to stand possessed of the proceeds of sale on certain trusts therein mentioned. The testator died in 1882, and more than six but less than twelve years had elapsed since the alleged debt was incurred. Amongst other things the plaintiff contended that the debt was barred by the Statute of Limitations.

Renshaw, Q.C., and *F. Thompson* for the plaintiff.

Marten, Q.C., and *Herbert Robertson* for the defendant.

Renshaw, Q.C., in reply.

KAY, J., held that the claim was barred as against the personal estate by the lapse of six years, but not as against the real estate, which was charged by the will with, or devised in trust for, payment of the testator's debts, and made a declaration to that effect, and referred the matter to chambers, reserving the costs.

Solicitors: Warburton & De Paula for the plaintiff; Cross & Sons for the defendant.

Chancery Division.
STIRLING, J.
June 21.
HAMBLING *v.* WALLANI.

Practice—Writ—Action for Recovery of Land—Claim for Injunction—Breach of Covenant—Joinder of Causes of Action—Order XVIII., rule 2.

In this case the plaintiff had let a house to the defendant, who had covenanted not to carry on any other than certain specified trades upon the premises. The plaintiff alleged that the defendant had broken the covenant, and he brought an action to recover the premises and for an injunction until the trial to restrain the breach of the covenant. He had not obtained leave under Order XVIII., rule 2, to join the two causes of action.

The question was whether there were two really distinct causes of action, or whether the claim for an injunction was not merely ancillary to the claim for recovery of possession.

Ashton Cross, for the defendant, who had not entered an appearance, moved to set aside the writ.

H. Terrell for the plaintiff.

STIRLING, J., held that there were two distinct causes of action. The breach of the covenant was not merely past, but continuing. The defendant was therefore entitled to have the writ set aside.

Solicitors: Charles Rogers for the defendant; Rooke & Sons for the plaintiff.

Chancery Division.
STIRLING, J.
June 21.
WOOD *v.* BIRCH.

Practice—Arbitration—Application to make Award an Order of Court—Notice of Motion or 'Ex parte.'

In this action, which was for dissolution of a partnership and for an account, there had been by agreement a reference to arbitration, and an award had been made.

The defendant now moved upon notice to make the award an order of Court, and the question arose whether the application ought to have been made *ex parte*.

Procter, for the defendant, contended that the practice was to make the application on notice (1 Seton on Decrees, 403). There was still jurisdiction to make an award (as distinguished from the submission) an order of Court. *Jones* v. *Jones*, L. R. 14 Chanc. Div. 593; *Gifford* v. *The Bury Town Council*, 57 Law J. Rep. Q. B. 181; L. R. 20 Q. B. Div. 368, showed the reason

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for the rule that such applications should be made upon notice—viz. in order to give the respondent an opportunity of objecting to the award if it was bad upon the face of it.

Vernon Smith, for the respondent, submitted that the application ought to have been made *ex parte*, and referred to *Davey* v. *The Railway Passengers' Assurance Company*, 49 Law J. Rep. Chanc. 568.

STIRLING, J., said that there was certainly some doubt as to the practice. He could not see that any further advantage was gained in this case by making the award the rule of Court instead of the submission, which might have been done *ex parte*. There was no reason why such applications should not be made upon summons and *ex parte*. The defendant would only have such costs as would have been incurred if the application had been so made, and there would be no other order as to costs.

Solicitors: Ullithorne Currey & Villiers; Bell, Brodrick & Gray.

Chancery Division. STIRLING, J. June 18, 22. } WOOD *v.* ODESSA WATERWORKS CO. (LIM.)

Company—Dividends—Payment in Debenture Bonds—'Ultra Vires.'

Motion.

The defendant company was formed under the Companies Act, 1862, with a capital of 850,000*l.* in 42,500 shares of 20*l.* each, of which 30,000 were A preferred shares and 12,500 B deferred shares. All the A shares and 12,420 of the B shares had been issued, and were fully paid up. The accounts of the company showed a profit of 45,959*l.* 4*s.* 6*d.*; but this sum had been applied in the construction of productive works, being purposes for which the capital, and not the revenue, of the company was applicable.

The directors had issued a report, stating that they had resolved to raise, by way of further charge on the assets and property of the company, the sum of 100,000*l.*, of which 30,000*l.* was to be allocated by way of dividend of 1*l.* per share on the A shares, which dividend was to be paid, not in cash, but in bonds of 50*l.* or 100*l.* each, bearing interest at 5 per cent., and redeemable at par by annual drawings extending over thirty years. With the report notice was given of the ordinary general meeting of the company, at which the resolutions of the directors were adopted. The plaintiff, who was the holder of 355 A shares and 50 B shares, was not present at the meeting, but afterwards objected to the resolutions, and brought this action to restrain the directors from acting upon them upon the ground that what was proposed to be done was in contravention of the articles.

By the articles the directors might, with the sanction of the ordinary general meeting, declare a dividend 'to be paid' to the members. The A shareholders were to be paid 6*l.* per cent. before the B shareholders received anything, and the residue of profits, if any, was to be divided *pari passu* between both classes of shareholders. No unpaid dividend or interest was to bear interest against the company.

The question on the motion was whether the plaintiff, who sued on behalf of himself and all other shareholders of the company, was entitled to an injunction restraining the directors from paying a dividend in the proposed way.

Buckley, Q.C., and *T. B. Palmer* for the plaintiffs.

Hastings, Q.C., and *Kirby* for the company.

STIRLING, J., held that the rights of the shareholders were regulated by the articles. The *primâ facie* meaning of the articles was that dividends were to be paid in cash, and there was nothing in the articles to show that any other meaning ought to be put upon the words 'to be paid.' This was in accordance with what was laid down in the case of *Hoole* v. *The Great Western Railway Company*, L. R. 3 Chanc. 262, in which the property proposed to be divided amongst the shareholders consisted, not of debenture bonds, but of shares in the company, and these shares were to be issued at a discount. What was proposed in this case was not in accordance with the articles as they stood, and the plaintiff was therefore entitled to an injunction.

Solicitors: Turner & Hacon for plaintiff; Slaughter & May for company.

Chancery Division. KEKEWICH, J. June 7. } *Re* CAZENOVE. CAZENOVE *v.* CAZENOVE.

Legacy—Abatement—Immediate Legacy to Widow.

A testator bequeathed a legacy of 1,000*l.* to his wife, to be paid to her immediately after his decease, but the will contained no indication as to priority of payment. The estate being insufficient for payment in full of all the legacies, the question arose whether, having regard to the decision in *Re Hardy; Wells* v. *Barwick*, 50 Law J. Rep. Chanc. 241; L. R. 17 Chanc. Div. 798, the 1,000*l.* legacy must be paid in full or should abate.

Barber, Q.C., and *Jennings Smart*, *Farwell* and *Macnaghten* for the respective parties.

KEKEWICH, J., followed the decision in *Blower* v. *Morret*, 2 Ves. Sen. 420, and dissenting from *Wells* v. *Barwick*, held that the legacy must abate.

Solicitors: F. K. Robinson & Wilkins; Woodhouse, Trower & Co.

Queen's Bench Division. May 10, 16. } PARSONS *v.* THE LAKENHEATH SCHOOL BOARD.

Elementary Education Acts, 1870, 1873—*General Regulations*, 1886, *rule* 20—*School Board Election—Bill of Charges of Returning Officer—Reference to Education Department—Award of Smaller Sum—Power to reopen Taxation—'Final and conclusive' Decision.*

Appeal from the Brompton County Court.

The plaintiff acted as returning officer at an election for the Lakenheath School Board, and subsequently sent in his bill of charges, amounting to 36*l.* 5*s.* 10*d.*, to the defendants. The bill was referred to the Education Department under rule 20 of the General Regulations of 1886, which provides that 'the expenses of the election and of taking the poll and the remuneration to the returning officer and his assistants (if any) shall be paid by the School Board out of the school fund. Provided that, if any question shall arise between the returning officer and the School Board as to his bill for expenses or remuneration, such bill shall be referred to the Education Department, whose decision thereon shall be final and conclusive.' The Department taxed the plaintiff's bill, and awarded him 20*l.* 10*s.* The plaintiff thereupon drew the attention of the Department to certain items which had been disallowed, and asked the

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Department to reconsider the matter. The Department communicated with the defendants and with the plaintiff, and then awarded him 32*l.* 1*s.* 10*d.* The defendants refused to pay, alleging that the first award was 'final and conclusive' within the meaning of rule 20. The County Court judge held that the Department had power, with the consent of the parties, to reopen the inquiry, and found as a fact that the defendants had consented to the matter being reopened. He therefore gave judgment for the plaintiff for 32*l.* 1*s.* 10*d.*

Yelverton for the plaintiff.

C. A. Russell for the defendants.

The COURT (FIELD, J., and CAVE, J.) held that the decision of the County Court judge was right, and must be affirmed.

Appeal dismissed.

Solicitors: J. Algernon Latham, for the plaintiff; Archibald Scott Lawson, for O. F. Read, Mildenhall, Suffolk, for the defendants.

Queen's Bench Division. May 31. THE ATTORNEY-GENERAL *v.* SIR H. WILLIAMSON, BART. AND OTHERS.

Practice—Crown Suits—Information by Attorney-General—Costs—Costs of Action while Pending—Discontinuance—22 & 23 Vict. c. 21, s. 21—Order LXVIII., rule 2; Order LXV., rule 1.

In an information by the Attorney-General on behalf of the Crown relating to a claim to foreshore rights interrogatories were administered to the defendants. In answering these interrogatories the defendants were put to considerable expense. Subsequently the solicitors to the defendants were informed by the solicitors to the Crown that the Attorney-General did not intend to proceed further with the information, but that no notice of discontinuance would be delivered to the defendants or their solicitors. Upon this the defendants moved for an order directing the Crown to pay costs to be taxed on the higher scale, or that the cause be set down to be heard on the information and the answer of the defendants, such answer being taken to be admitted as true.

Lockwood, Q.C., and *Danckwertz* for the defendants.

Sir R. Webster, Q.C. (*Attorney-General*) and *Vaughan Hawkins* for the Crown.

The COURT (CAVE, J., and FIELD, J.) held that there was no jurisdiction to make the order, there being no power to dismiss the information for want of prosecution, and there being no power under the Rules as to costs, Order LXV. (which by Order LXVIII., rule 2, and 21 & 22 Vict. c. 21, s. 21, are made applicable to informations), to award costs in an action while the action is pending.

Solicitors: Solicitors to Woods and Forests for the Crown; Crossman & Prichard (for Kidson, M'Kenzies & Kidson, Sunderland) for the defendants.

Queen's Bench Division. June 19. TANCRED AND OTHERS *v.* THE DELAGOA BAY AND EAST AFRICAN RAILWAY COMPANY.

Assignment of Debt—Mortgage—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, subs. 6.

Appeal from a decision of the Master in chambers, referred by Denman, J., to the Court.

The action was brought by Messrs. Goslings & Sharpe as assignees of the plaintiff, Sir Thomas Tancred, by virtue of an absolute assignment in writing, not purporting to be by way of charge only, of which express notice in writing had before action been given to the defendants. The assignment was contained in an indenture by way of mortgage, and purported, in consideration of advances made and to be made by the assignees, to assign all sums of money due or to become due from the defendants in respect of work executed by the plaintiff. There was a proviso for redemption and reassignment on repayment of all moneys advanced by the assignees.

The COURT (DENMAN, J., and CHARLES, J.) held, following *Burkinson* v. *Hall*, 53 Law J. Rep. 12 Q. B. 222; L. R. 12 Q. B. Div. 347, and disapproving *The National Provincial Bank* v. *Harle*, 50 Law J. Rep. Q. B. 437; L. R. 6 Q. B. Div. 626, that the deed was an absolute assignment not purporting to be by way of charge only within the Judicature Act, 1873, s. 25, subs. 6.

Queen's Bench Division. June 21. FLEMING *v.* DOLLAR.

Practice—Pleading—Libel—Justification—Payment into Court — Embarrassing Defence — Divisibility of Charges in Libel—Qualification as to some—Payment into Court as to others—Rules of Court, 1883, Order XXII., rule 1.

Appeal from order of POLLOCK, B., at chambers, striking out statement of defence unless amended. The plaintiff brought his action for an alleged libel by the defendant in a letter to a newspaper. The defendant pleaded that, except as thereinafter admitted, the words were fair comment on a matter of public interest and discussion, and to the extent thereinafter stated were true in substance and in fact. He then proceeded to justify the various statements in his letter, and concluded by admitting that in the heat of the discussion, and provoked by words published of him by the plaintiff, he used words of the plaintiff not wholly justified by the facts thereinbefore mentioned, and that could not be considered in every respect as fair comment, and paid 40*s.* into Court to satisfy the plaintiff's claim.

The plaintiff took out a summons under Order XXII., rule 1, to strike out the defence as embarrassing, and the order was made.

The defendant appealed.

C. W. Mathews for the plaintiff.

Finlay, Q.C., and *Bray* for the defendant.

The COURT (LORD COLERIDGE, C.J., and HAWKINS, J.) held that, as the defendant had pleaded justification to the whole of the libel, and had paid money into Court in respect of a portion, such a plea was embarrassing, and that justification and payment into Court could not be pleaded together. But where the charges in a libel were divisible, the defendant could plead justification as to some of them and pay money into Court in respect of the others.

Appeal dismissed.

Solicitors: H. C. Godfray for the plaintiff; J. W. Sykes for the defendant.

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Table of Cases.

HOUSE OF LORDS.

House of Lords. March 28, 29. April 5, 9, 11. July 1. } DERRY AND OTHERS *v.* PEEK.

Company — Misstatement in Prospectus — Action for Deceit—False Statement made 'bond fide'—Absence of Reasonable Cause for believing it true.

This was an appeal from a decision of the Court of Appeal, reported 57 Law J. Rep. Chanc. 347, which reversed one of STIRLING, J.

Sir H. Davey, Q.C., and *Moulton, Q.C.* (*M. Muir Mackenzie* with them), for the appellants.

Bompas, Q.C., and *Byrne, Q.C.* (*A. Pattullo* with them), for the respondent.

Cur. adv. vult.

Their LORDSHIPS (LORD HALSBURY, L.C., LORD WATSON, LORD BRAMWELL, LORD FITZGERALD, and LORD HERSCHELL) reversed the decision of the Court of Appeal, with costs.

Solicitors: Linklater, Hackwood, Addison & Brown for appellants; Tamplin, Taylor & Joseph for respondent.

HIGH COURT OF JUSTICE.

Chancery Division. STIRLING, J. May 28. } *In re* MIDDLESBROUGH, REDCAR, SALTBURN-BY-THE-SEA, &C., BUILDING SOCIETY.

Building Society—Liquidation—Distribution of Surplus Assets—Liability of Unadvanced Members.

The society was enrolled under 6 & 7 Wm. IV. c. 32, and was not registered under the Building Societies Act, 1874. In August, 1881, the society went into liquidation. At that date there were 1,475 unadvanced members, whose shares were fully paid; two unadvanced members, whose shares were not fully paid, but the payments in respect of whose shares were not in arrear; and 244 unadvanced members, whose shares were not fully paid, and whose payments in respect of such shares were in arrear. There was also a class of advanced or borrowing members, who had not repaid the advances made to them by the society. These advanced members were, by the rules of the society, also holders of at least one unadvanced share each.

All the creditors of the society had been paid in full, and there was a sum of 30,000*l.* surplus assets for division amongst the members.

This was a summons taken out by the liquidator for the purpose of determining the respective rights or liabilities of the various classes of members.

The rules of the society provided for the payment of subscriptions of 5*s.* per month until the accumulated subscriptions should amount to 10*l.* per share, when the subscriptions were to cease, and 10*l.* per share was to stand at the credit of the members according to the respective number of shares they might hold. By rule 20 no member was to receive any dividend or distribution of profits until the whole of the 10*l.* per share had been paid by the members; and by rule 32, when all payments due to the society by members or others had been satisfied and all debts paid, the stock of the society was to be divided amongst the members according to the respective numbers of unadvanced shares which each member might have standing to his credit in the books.

Seward Brice, Q.C., and *W. H. Jackson* for the liquidator.

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W. Pearson, Q.C., and *C. W. Greenwood* for the unadvanced members whose shares were fully paid.

Graham Hastings, Q.C., and *Swinfen Eady* for the unadvanced members whose shares were not fully paid up and whose payments were in arrear.

Butcher for the advanced members.

The unadvanced partly paid members not in arrear were not represented.

STIRLING, J., said that the rules were directed to a winding-up by the society itself, and not to a compulsory liquidation. He discussed the cases of *In re The Doncaster Permanent Building Society*, 36 Law J. Rep. Chanc. 871; L. R. 3 Eq. 158; 4 Eq. 579; *Brownlie* v. *Russell*, L. R. 8 App. Cas. 235; and *Tosh* v. *The North British Building Society*, 11 App. Cas. 489, and said that the effect of those decisions was this—that when a compulsory winding-up intervened, a line was to be drawn at the date of the liquidation, and thereupon the liability of the shareholders was put an end to so far as anything which went beyond the amount which they were bound to contribute up to that date; and where there were surplus assets they were to be distributed as nearly as possible according to the interests of the members as they existed at the date of the winding-up. The unadvanced members, therefore, whose payments were in arrear must (without being subject to any personal liability) pay up, or bring into account all that they were bound to pay at the date of the winding-up, and after that they would be entitled to share *pari passu* in the capital of the society in proportion to their interests; that was to say, they would be entitled to receive their share of the capital to which they had contributed, and the profits attributable to such share. As to the advanced members, the authorities showed that they were not to be put upon the list of contributories.

Solicitors: Morse & Simpson, agents for Jackson & Co., Middlesbrough; H. S. Metcalfe; Rowe & Co.

Chancery Division.
STIRLING, J.
June 28.

In re THE NEW EBERHARDT COMPANY (LIM.). *Ex parte* MENZIES.

Company—Shares—Rectification of Register—Shares to be held as fully Paid-up in Cash—Registered Agreement—Execution by Company only—Companies Act, 1867, *s.* 25.

This was a motion by E. F. Menzies to have the register rectified by striking out his name as the holder of 400 preference shares in the company on the ground that the shares had not been fully paid in cash, and that a proper agreement had not been filed with the registrar of joint-stock companies as required by section 25 of the Companies Act, 1867. The shares in question were allotted to the applicant in pursuance of a scheme whereby the assets and property of the Eberhardt and Monitor Company were transferred to the new company, and fully paid shares in the new company were allotted to the holders of debentures in the old company. The agreement under which this was effected was duly filed, but it was only executed by the company and not by the allottees of the shares. The applicant contended that it was, on that account, not a sufficient contract so as to satisfy the section.

Whinney for the applicant.

Grosvenor Woods for the company.

STIRLING, J., said that the question was whether the contract was a contract 'duly made in writing' determining that the shares were to be held otherwise than as subject to the payment of full value in cash. His lordship thought that it was. It was under the seal of the company, upon which it was binding. It was made for valuable consideration; and it was in writing, which was all the Act required. The statute did not require it to be signed by all parties. The contracting party was the company, and the company had signed it. The document completely satisfied the terms of the Act, and the application failed.

Solicitors: Snell, Son & Greenip.

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Chancery Division.
KEKEWICH, J.
June 20.

PHILIPS *v.* CAYLEY.

Power of Appointment—Power to Appoint by Will with special reference to Power—General Bequest—Wills Act, s. 27.

By a settlement a power was reserved to appoint a property by 'a will expressly referring to the power.' The donee of the power did not purport to make any express exercise of the power, but his will contained a general bequest, without any reference to the power.

It was contended, on the authority of *Re Marsh; Mason* v. *Thorn*, 57 Law J. Rep. Chanc. 639; L. R. 38 Chanc. Div. 630, that by virtue of section 27 of the Wills Act the power must be taken to have been exercised.

Warmington, Q.C., and *Warrington*, for the parties entitled in default of appointment, referred to *Charles* v. *Burke*, L. J. N. of C. 1889, p. 1, and *Re Phillips; Robinson* v. *Burke*, L. J. N. of C. 1889, p. 58, as not following the authority cited.

Barber, Q.C., and *Allen* for the parties claiming under the general bequest.

Bramwell Davis for the trustees of the settlement.

KEKEWICH, J., dissented from the decision in *Re Marsh; Mason* v. *Thorn*, and held that, the settlor having excluded an appointment by a will not expressly referring to the power, the power had not been exercised by the general bequest.

Solicitors: Potter, Sandford & Kilvington; Allen & Son.

Chancery Division.
KEKEWICH, J.
June 22.

SIDDALL *v.* VICKARS.

Patent—Infringement—Account of Profits.

The plaintiff, having obtained judgment in an action to restrain infringement of a patent for a mechanical arrangement for use in the manufacture of iron and steel forgings, had elected to take an account of profits. Upon the account the defendants objected to disclose the profits made by them in the manufacture of forgings before they used the plaintiff's invention and the

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profits made by them in the same manufacture whilst they used the invention, their contention being that a great part of the increased profits were attributable to other changes adopted in the mode of manufacture beyond the use of the plaintiff's invention.

The plaintiff contended that the profits in fact made must be disclosed.

The Attorney-General (*Sir Richard Webster*), *Aston, Q.C.*, and *Lawson* for the plaintiff.

Moulton, Q.C., and *Bousfield* for the defendants.

KEKEWICH, J., said that, although many factors might be involved in the consideration of the question of the profits to which the plaintiff was entitled, it was clear that the Court must be informed as to the profits made by the defendants in the manufacture of forgings before July 6, 1886, when they began to use the plaintiff's invention, and made an order in these terms: 'The Court being of opinion that, for the purpose of ascertaining the profits made by the use of the plaintiff's invention pursuant to the judgment, it is necessary to inquire what was the cost of manufacturing the forgings made by the defendants prior to their use of the plaintiff's invention, and also what was the cost of like manufacture during the defendants' use of the invention and afterwards, order the defendants within fourteen days to bring in a further and better affidavit and account giving such information accordingly.'

Solicitors: Johnson, Son & Ellis; Cattarns, Jehu & Co.

Queen's Bench Division. June 26. } MITCHELL *v.* SIMPSON.

Sheriff—Sheriffs Act, 1887 (50 & 51 *Vict. c.* 55), *s.* 14—*Debtors Act*, 1869 (32 & 33 *Vict. c.* 62), *s.* 5—*Commitment Order—'Attachment for debt.'*

Motion for new trial.

The action was brought by the plaintiff against the defendant, the head bailiff of the Salford Hundred Court, under section 14 of the Sheriffs Act, 1887, for damages for an alleged breach of duty. Judgment for a sum of 31*l.* had been recovered against the plaintiff in the Salford Hundred Court. A judgment summons having been issued, the judge made an order in the ordinary form, committing the plaintiff to prison 'for twenty-one days from the date of his arrest, including the day of such date, or until he shall pay 31*l.*,' together with interest at 4*l.* per cent., and 1*l.* 10*s.* for costs. In pursuance of such order, the defendant arrested the plaintiff in London and conveyed him at once to a police station, and subsequently, on the same evening to Manchester, where he was lodged in the gaol. The plaintiff based his claim on section 14 of the Sheriffs Act, 1887, which provides 'that where an officer being a sheriff, under-sheriff, serjeant-at-mace, or other officer whatsoever, arrests or has in custody any person by virtue of any action, writ, or attachment for debt, such officer shall not . . . take such person to any prison within twenty-four hours of the time of his arrest, unless such person refuses to be carried to some safe and convenient dwelling-house of his own nomination, not being the private dwelling-house of such person and being within the borough or town where such person was arrested, or if he was not arrested within a borough or town, then within three miles of the place and in the county or franchise in which he was arrested.' The action was tried before MANISTY, J., who held that section 14 did not apply to an arrest upon an order of commitment under the Debtors Act, 1869, and gave judgment for the defendant. The plaintiff moved for a new trial.

Winch, Q.C., and *J. D. O'Flynn* for the plaintiff.

Ambrose, Q.C., and *A. J. David* for the defendant.

The COURT (DENMAN, J., and CHARLES, J.) held that a commitment order was a punishment for contumacy, and not merely a means of enforcing a 'debt,' and that, therefore, the decision of Manisty, J., was correct.

Motion dismissed.

Solicitors: Paterson & Sons for the plaintiff; W. H. Herbert (for H. Simpson, Manchester) for the defendant.

Probate, Divorce, and Admiralty Division. May 30. } BRINKLEY *v.* THE ATTORNEY-GENERAL.

Legitimacy Declaration Act—21 & 22 *Vict. c.* 93—*Citation—Practice.*

Melshamer for petitioner.

Gwyn James for the Attorney-General.

Probate, Divorce, and Admiralty Division. June 4. } SCARAMANGA *v.* THE ATTORNEY-GENERAL.

Greek Marriages Act—47 & 48 *Vict. c.* 20—*Citation—Practice.*

Bargrave Deane for petitioner.

Gwyn James for the Attorney-General.

The point raised in both cases was precisely the same, as the Greek Marriages Act incorporated the section of the Legitimacy Declaration Act on which the question arose. *Upton* v. *The Attorney-General*, 32 L. J. Rep. P. & M. p. 177, was cited on behalf of the defendants.

BUTT, J.: These two cases, one under the Legitimacy Declaration Act, and the other under the Greek Marriages Act, raise exactly the same point—viz. whether the party proceeding can set down his case for trial without citing anybody except the Attorney-General. I have consulted the president and the registrars, and the conclusion we have come to is that the proper course is to make an application to the registrar to set down the case for hearing and represent to him the true state of the case by affidavit or otherwise; the registrar, if he thinks that any one else should be cited, will either make the order himself or, in cases of difficulty, adjourn it for the consideration of the Court. The Act clearly contemplates the exercise of some discretion by the Court. That is to be the practice in all such cases.

Solicitors: Bowman & Crawley-Boevey for Brinkley; Freshfields for Scaramanga; Solicitor to the Treasury for Attorney-General.

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Probate, Divorce, and Admiralty Division. June 4. } JANE THORNTON, DECEASED.

Destruction of Codicil—Mistake of Law.

The testatrix made a will, dated July 7, 1885, and four codicils. A fifth codicil was executed on March 21, 1889, but was destroyed on the same day by being torn in pieces by her two great-nieces at the testatrix's own request, under the impression that the codicil was invalid owing to the day of the month and the month being transposed by a clerical error, so that the date ran 'the March day of 21st.' The fragments of the codicil were enclosed in a letter sent to the testatrix's solicitor with instructions to prepare a precisely similar codicil. This was done, but the testatrix died before executing the fresh codicil.

Inderwick, Q.C.

Held by BUTT, J., that the codicil was not destroyed *animo revocandi*, but under a mistake, and the fragments of the codicil would therefore be admitted to probate.

Solicitor: Sharon G. Turner.

Probate, Divorce, and Admiralty Division. June 18, 19. } WHEELER *v.* WHEELER (RHODES INTERVENING).

A husband respondent, in his answer, charged his wife with committing adultery with a certain person, but did not, as he might have done under section 2 of 29 Vict. c. 32, claim any relief or make the adulterer a co-respondent.

Mr. Rhodes, the person charged with adultery, had obtained an order at chambers giving him leave to intervene.

R. H. Pritchard, for the respondent, moved to rescind the order. The respondent claimed no relief against Rhodes, therefore the Court had no power to give him leave to intervene.

Crosse, for the intervener, *contrà*.

Middleton, for the petitioner, supported the order sanctioning the intervention.

Cur. adv. vult.

June 19.—BUTT, J., held that the order at chambers was rightly made and ought to be upheld.

Application dismissed, with costs.

Probate, Divorce, and Admiralty Division. July 2. } WOOD *v.* WOOD AND WHITE.

Married Women's Property Act, 1882 (45 & 46 *Vict. c.* 75), *s.* 17—*Order to deliver up Property belonging to Wife.*

In this case a petition had been filed by the husband for dissolution on April 15, 1889. On June 13 Mr. Registrar Pritchard made an order on the petitioner to deliver up within five days certain articles which the respondent claimed as wedding presents.

This order was made under the Married Women's Property Act, 1882, s. 17.

BUTT, J., held that the registrar had no power under this Act to make such an order.

Bargrave Deane for petitioner.

Order reversed

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COURT OF APPEAL.

Court of Appeal.
COTTON, L.J.
FRY, L.J.
LOPES, L.J.
June 25.

HAGGIN *v.* COMPTOIR D'ESCOMPTE DE PARIS. MASON & BARRY *v.* THE SAME.

Practice—Service—Foreign Corporation—Office in this Country—Rules of Supreme Court, 1883, *Order IX., rule* 8.

Two appeals from the refusal of Divisional Court to set aside the writs in the action which had been served on the office in London of the defendant corporation.

The defendant corporation was established by French law as a company for banking and other financial operations, and had their chief office in Paris. It had a branch in London, with an office, with the name of the corporation on the door. The manager of the London branch held a power of attorney authorising him to conduct the banking and discount business, but not all the other operations of the corporation.

The actions were brought on guarantee given by the corporation in Paris. The writs in the action were served on the manager of the London branch in London.

The corporation took out summonses to set aside the service, but the Divisional Court, affirming the previous decision of the master and the judge, refused to set it aside.

The corporation then appealed.

Bigham, Q.C., and *Tindal Atkinson* for the appellants.

Cohen, Q.C., and *J. Wallis* for the plaintiff Haggin.

Finlay, Q.C., and *F. W. Hollams*, for the plaintiffs Mason & Barry, were not called upon.

Their LORDSHIPS dismissed the appeal. They held that the question depended on Order IX., rule 8, which followed the terms of the repealed section 16 of the Common Law Procedure Act, 1852; but, although the term 'corporation aggregate' was, strictly speaking, one of English law, it would describe a foreign corporation which had a residence or a domicil in this country; and, although the rule would not authorise service on a foreign corporation which had no residence here, yet when a foreign corporation came on business here in the way in which the defendant corporation did, and was allowed to sue in this country, there could be no reason why it should not be liable to be served with a writ in this country. The case of *Newby* v. *Van Oppen*, 41 Law J. Rep. Q. B. 148; L. R. 7 Q. B. 293, was an authority to that effect; and, although a decision on section 16 of the Common Law Procedure Act, 1852, still, as it had stood for seventeen years, without having been adversely commented on, and the section itself, having had this particular construction put upon it by that case, had been re-enacted by the rule now in force, it must be treated as being in the contemplation of the Legislature as a correct interpretation of the law.

Solicitors; Lyne & Holman for the appellants; Rowcliffes, Rankin & Co. for Haggin; Hollams, Son & Co. for Mason & Barry.

Court of Appeal.
COTTON, L.J.
FRY, L.J.
LOPES, L.J.
June 26.

THE LANCASHIRE AND YORKSHIRE RAILWAY COMPANY *v.* THE ASSESSMENT COMMITTEE OF BOLTON UNION.

Rural Authority—Urban Authority—Powers for Lighting District—General Expenses—Special Expenses—Mode of Levying Rates—Assessment of Railway Company—Public Health Act, 1875, *ss.* 161, 207, 211, 229, 230, 276.

Appeal of assessment committee from an order of Divisional Court reducing a rate on special case under 12 & 13 Vict. c. 45, s. 11.

The Bolton Union is a rural sanitary authority under the Public Health Act, 1875. The township of Great Lever is part of a contributory place within the rural district. It being desirable to empower the Bolton

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Union to make contracts for lighting with gas and erecting lamp-posts, &c., in the streets within certain contributory places within the district (including Great Lever), the Local Government Board made an order on December 11, 1882, under section 276 of the Public Health Act, that the provisions (the first paragraph of section 161 of the Act) should be enforced within those contributory places, and proceeded: 'We hereby invest the guardians of the Bolton Union with all the powers, rights, duties, capacities, liabilities, and obligations of a rural sanitary authority under their provisions within the said portions of their district.'

The guardians incurred expense in lighting Great Lever, and from time to time served precepts on the overseers to raise the expenses out of the poor-rates of Great Lever as a contribution to the 'general expenses' of the rural sanitary authority. In April, 1887, the overseers levied a rate of 2*s.* in the pound on the net rateable value of the railway company's property within the township. The company objected, claiming that they ought to be rated on only one-fourth of the rateable value under section 211 of the Act, and the Divisional Court approving, treating the expenses as special expenses within sections 229 and 230 of the Act, upheld the contention of the railway company.

Henn Collins, Q.C., and *Broadbury* for the appellants.

Meadows White, Q.C., and *C. A. Russell* for the railway company.

Their LORDSHIPS allowed the appeal. The Local Government Board having empowered the rural authority to exercise certain powers and incur expense, such authority must of course pay those expenses, and the question arises out of what funds and in what manner they were to be paid. The mode of defraying expenses of an urban authority was prescribed by section 207, while sections 229 and 230 provided for the expense of a rural authority. The expenses incurred in lighting were not special expenses under the Act, and had not, as might have been done, been, under section 229, determined to be such by order of the board; consequently, it being a general expense, it must be provided for under section 229. The clause of the railway company was based on section 211 of the Act, but that section only applied to rates made by an urban authority, and the appellants, being a rural authority, had no power either under the Act or under the order of the board to levy rates in that way, there being nothing in the order which had the effect of incorporating section 211, as there might have been had it been desired, or prescribing the way in which the money was to be raised.

Solicitors: Clarke, Woodcock & Ryland (for C. Moorhouse, Manchester), Holden & Holden, Bolton.

Court of Appeal.
COTTON, L.J.
FRY, L.J.
LOPES, L.J.
June 28.

THE AUTOMATIC WEIGHING MACHINE COMPANY *v.* THE COMBINED WEIGHING AND ADVERTISING MACHINE COMPANY.

Practice—Stay of Execution—Set-off of probable Costs in another Action—Time for making Application—Rules of the Supreme Court, 1883, *Order LVIII., rule* 16; *Order LXV., rule* 27 (21).

An action for infringement of a patent and a cross-action by the defendants for groundless threats of legal proceedings had been set down together for trial. KEKEWICH, J., held at the trial of the first action that the defendants had infringed and gave judgment for the plaintiffs in that action, and as a consequence dismissed the cross-action of the defendants.

On appeal the Court of Appeal held that there had been no infringement and dismissed the first action, and ordered the cross-action to be remitted again to Kekewich, J., for trial. Though the defendants in the first action had been ordered to give security for the costs of the appeal, the plaintiffs in the first action did not on the occasion of the judgment of the Court of Appeal apply to the Court for a stay of taxation in order that any costs which the defendants in the first action might become liable to pay, if their cross-action for threats was not successful, might be set-off against the costs ordered to be paid by the plaintiffs in the first action to the defendants, but the plaintiffs now made the application.

Neville, Q.C., and *R. Griffin* in support of the application.

F. L. Furminger contrà.

Their LORDSHIPS held that, although, if the application had been made when the judgment of the Appeal Court was given, it might very probably have been granted, yet that it must now be refused, as the defendants in the first action had by the judgment of the Appeal Court obtained a present right, which they could not be deprived of, to payment of the costs in the first action.

Application refused, with costs.

Solicitors: Adam Burn & Son for applicant; Perkins & Sawyer for respondent.

Court of Appeal.
COTTON, L.J.
FRY, L.J.
LOPES, L.J.
June 29.

In re LAMB (JOHN HENRY).

Solicitor—Offences under Solicitors Act, 1843 (6 & 7 *Vict. c.* 73), *s.* 32—*Striking off Rolls—Petition for Readmission.*

On August 2, 1886, an order was made by a Divisional Court striking J. H. Lamb off the roll of solicitors for an offence committed under section 32 of the Solicitors Act, 1843 (6 & 7 Vict. c. 73), by reason of his permitting his name to be used in legal proceedings for the profit of an unqualified person. Lamb had appealed from this order, but had not prosecuted his appeal, which had accordingly been dismissed for non-appearance. Subsequently, in July, 1887, Lamb gave notice of motion to revive the appeal, but the application was dismissed. In March, 1889, Lamb presented a petition to the Master of the Rolls, praying to be readmitted as a solicitor. The Master of the Rolls referred the petition to the Queen's Bench Division to be dealt with by that Court, and a Divisional Court (FIELD, J., and CAVE, J.) on May 31, 1889, made an order dismissing the petition.

Lamb appealed from the last-mentioned order.

Waddy, Q.C., and *Crispe* for the appellant.

R. T. Reid, Q.C., and *F. W. Hollams* for the Incorporated Law Society, the respondents.

Their LORDSHIPS held that when a solicitor had been

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struck off the roll of solicitors for an offence under section 32 of the Solicitors Act, 1843 (6 & 7 Vict. c. 73), it followed as an inevitable statutory consequence that he was forever after disabled from practising as a solicitor, and no judge or Court had any power to re-admit him as a solicitor.

Solicitors: L. W. Gregory for the appellant; E. W. Williamson for the respondent.

Court of Appeal.
COTTON, L.J.
FRY, L.J.
LOPES, L.J.
July 4, 5, 6.
} HUNT *v.* CLARKE.

Action for Misrepresentation—Observation in Newspaper before Trial—Application to Commit for Contempt of Court.

Appeal from decision of MATHEW, J., and GRANTHAM, J.

The action was brought for false representation as to certain companies and was entered in the cause list printed and published as an action for fraudulent misrepresentation.

On April 12, 1889, the following paragraph appeared in the *Star* newspaper: 'To investors and others.—In the list of cases to be tried in the Queen's Bench Division by special jury after the Easter holidays is the case of *William Henry Hunt* v. *Frederick Neville Clarke and William Adams*, which is expected to occupy the time of the Court for several days and to present features of great interest to investors. The sum of 1,800*l.* with interest and dividends is claimed by the plaintiff from the defendant Clarke, on the ground of alleged misrepresentation in connection with the Gyrophone Top Patent, the Inventions Trust Association, Musical Instruments Company, Investors' Mart (Lim.), the Moldacot Royalties Trust (Lim.). Hunt further claims 500*l.* against both defendants for alleged misrepresentation in connection with the business of the defendant Adams. Mourners over the Moldacot fiasco are likely to hear a little inside history of the business.' The defendant Clarke applied to Mathew, J., and Grantham, J., to commit the publisher of the *Star* for contempt of Court in publishing this paragraph. The publisher filed an affidavit that he was not before aware of the paragraph, that it was published in the ordinary course of business, that he had no interest in the action, and had not inserted the paragraph with a view to prejudicing the trial, and he submitted that he had not been guilty of contempt of Court. The learned judges held that the insertion of the paragraph in the *Star* was not contempt of Court as likely to influence the judge or jury, and was not calculated to prejudice the fair trial of the action, and refused the application with costs.

Clarke appealed.

Oswald (*R. V. Williams, Q.C.*, with him) for the appellant.

Lockwood, Q.C., *Bremner*, and *Gregson Ellis* for the respondent.

Their LORDSHIPS held that the insertion of the paragraph in the *Star* pending the trial of the action was technically a contempt of Court, but that there was not any such interference with the conduct of the action as would prejudice the parties or the fair trial of the action, and, therefore, no application to the Court for committal ought to have been made. The appeal must, therefore, be dismissed; but in order to show that the Court disapproved of the publication of paragraphs pending the trial of the action and of the observations in the paragraph complained of, the appeal would be dismissed without costs.

Solicitors: W. H. Tattam for the appellant; Ashurst, Morris & Co. for the respondent.

HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
June 12.
} *In re* DALE & PLANT (LIM.).

Company—Winding-up—Agreement between Promoters and Secretary before Incorporation—Ratification by Company—New Agreement—Appointment by Articles of Association—Proof for Damages.

Adjourned summons.

This was a claim by the secretary of the company in the winding-up for arrears of salary, and also for damages on account of his alleged engagement for five years having terminated by the winding-up.

By an agreement dated October 13, 1886, the promoters of the company agreed with the applicant that he should be secretary for five years at a specified salary. The company was incorporated three days afterwards, and the articles provided that the applicant should be secretary for five years, and that the directors might for that purpose adopt the terms of the draft already prepared and settled and identified by the signatures of the subscribers thereto of the agreement in question, and that the board of directors should accordingly and forthwith make binding upon the company the terms of such draft agreement. The articles also empowered the directors to appoint a secretary and other officers.

At the first meeting of directors a resolution was passed confirming the agreement of October 13, 1886, between the applicant and the company.

Chadwyck Healey, for the applicant, contended that there was sufficient evidence of a new agreement between the applicant and the company to sustain the claim for damages.

Renshaw, Q.C., and *Levett*, for the liquidators, were not called on.

KAY, J., said that the applicant was entitled to claim a *quantum meruit* for his actual services as secretary, but not to claim damages for the determination of his alleged five years' engagement. The agreement between him and the promoters before the incorporation of the company could not, according to well-settled authorities, of which their logic was, perhaps, the most satisfactory part, be ratified by the company after its incorporation, and that was what the directors had attempted to do, instead of making a new contract between the company and the applicant. The appointment by the articles of association did not amount to a contract between the applicant and the company, but was merely a matter between the shareholders *inter se*. So much of the claim as asked for damages must accordingly be disallowed.

Solicitors: Belfrage & Co.; Ellis, Munday & Bartrum.

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Chancery Division.
KAY, J.
June 29.
July 6, 8.
In re HENRY POUND, SON, & HUTCHENS (LIM.).

Company—Winding-up—Receiver—Debenture-holders—Appointment of Receiver under Express Power—Right to Possession of Property of Company.

Adjourned summons.

On May 4, 1889, the above-named company was ordered to be wound up compulsorily on a petition presented on March 9, and an official liquidator was appointed.

On May 10, 1889, the applicants, who held all the debentures of the company, in exercise of an express power contained in the debentures, appointed a receiver, and, being desirous that he should obtain possession of the company's property, took out this summons claiming that, notwithstanding the appointment of the official liquidator, the receiver appointed by the applicants might be at liberty forthwith to take possession of all the undertaking and property, both real and personal, of any kind of the company. The debentures constituted a charge on all the real and personal property of the company, present or future, and expressly empowered the applicants, after the presentation of a winding-up petition, to appoint a receiver of the company's property in the same way as if the applicants were mortgagees within the meaning of the Conveyancing and Law of Property Act, 1881, and provided that such receiver might take immediate possession of the company's property, with power to sell and lease the same and give receipts and execute assurances for realising the property.

Rigby, Q.C., Renshaw, Q.C., and *Theobald* for the applicants.

Marten, Q.C., and *J. Chester* for the liquidator.

KAY, J., refused to make the order asked, but made an order appointing the official liquidator to be receiver on behalf of the debenture-holders, and gave leave to the applicants to attend all proceedings in the winding-up, the costs of the applicants of attending the proceedings and of this application to be added to their security.

Solicitors: Linklater & Co. for the applicants; Bonner, Wright, Thompson & Co. for the liquidator.

Chancery Division.
NORTH, J.
June 28.
In re GIANACLIS' TRADE-MARK.

Register of Trade-marks—Rectification—Definition of Trade-mark—Person aggrieved—Patents, &c., Act, 1883, *ss.* 64, 90.

In 1885 Nestor Gianaclis obtained the registration of the words 'Gianaclis Cigarettes,' in capital letters, as his trade-mark, not used before August, 1875, for tobacco and cigarettes.

In 1889 N. Gianaclis commenced an action against one George Elliotts, who was selling cigarettes under the name of N. Gianulis, in which he sought to restrain the defendant from trading under that name. No injunction was asked specifically directed to infringement of trade-mark, but the registration was set out in the statement of claim.

Elliotts moved to rectify the register of trade-marks by removing from it the trade-mark registered by Gianaclis, on the ground that it was not within the definition of section 64 of the Patents, &c., Act, 1883.

Sebastian for the motion.

D. Sturges, contrà, urged that the applicant was not a 'person aggrieved' within section 90.

NORTH, J., held (1) that the words did not constitute a registrable trade-mark; (2) that the applicant was a 'person aggrieved,' inasmuch as an action had been brought against him in which it was sought to make use of the registration; (3) that the mark must be removed from the register without waiting for the hearing of the action; (4) but that the costs should be reserved to be dealt with then.

Solicitors: Stacpole, Batters & Co. for the applicant; Routh, Stacy & Castle for the respondent.

Chancery Division.
CHITTY, J.
July 5.
BURLAND & Co. *v.* THE BROXBURN OIL COMPANY (LIM.).

Trade-mark—Fancy Word—Disclaimer—Rectification of Register—Patents, &c. Act, 1883, *ss.* 64, 74, 90.

The plaintiffs were the registered owners of a trade-mark for a laundry preparation. The mark consisted of the plaintiffs' signature, lengthy printed matter, and the word 'Washerine' occurring some ten times prominently in large letters, and was such as might be, and was, used as a label for bottles containing the preparation.

The defendants having used the word 'Washerine' for the sale of a preparation sold in packets, the plaintiffs moved for an injunction; but their motion was dismissed by CHITTY, J., on the ground that 'Washerine' was descriptive of the goods, and not a fancy word within section 64 of the Patents, &c. Act, 1883.

The defendants then moved, under section 90, for rectification of the register, by expunging the word 'Washerine' from the plaintiffs' mark, submitting that the word 'Washerine' was common to the trade within section 74 (1 *b*) of the Act; and therefore that under section 74 (2) the plaintiffs should have entered on the register a disclaimer of the word.

The plaintiffs, on the other hand, contended that by 'common to the trade' was meant 'in common use.'

Byrne, Q.C., and *J. Cutler* for the plaintiffs.

Romer, Q.C., and *Carpmael* for the defendants.

CHITTY, J., held that by 'common to the trade' was meant 'open to the trade,' and allowed the defendants' motion, with costs.

Solicitors: Torr, Janeways & Co.; Wilson, Bristows and Carpmael.

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COURT OF APPEAL.

Court of Appeal.
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July 2, 5.

RUSSELL *v.* CAMBEFORT & CO.

Practice—Service of Writ of Summons—Foreign Partnership Firm—Service on Manager at Place of Business within the Jurisdiction—Rules of the Supreme Court, 1883, *Order IX., rule* 6.

Order IX., rule 6, which provides that, 'where persons are sued as partners in the name of their firm, the writ shall be served . . . at the principal place within the jurisdiction of the business of the partnership upon any person having at the time of service the . . . management of the partnership business there,' does not enable a writ of summons to be served on the manager at the principal place within the jurisdiction of the business of a foreign partnership firm, the members of which are foreign subjects domiciled and resident in a foreign country.

O'Neile v. *Clason*, 46 Law J. Rep. Q. B. 191, overruled.

Jelf, Q.C., and *R. M. Bray* for the appellants, the defendants.

Tindal Atkinson for the respondents, the plaintiffs.

Solicitors: Bell, Brodrick & Gray; Clarke, Woodcock & Ryland.

Court of Appeal.
LORD COLERIDGE, L.C.J.
LINDLEY, L.J.
LOPES, L.J.
May 28, 31. July 6.

ALBUTT *v.* THE GENERAL COUNCIL OF MEDICAL EDUCATION AND REGISTRATION OF THE UNITED KINGDOM AND ANOTHER.

Libel—Privilege—Publication of Matter of Public Interest—Medical Registration Act, 1858 (21 & 22 *Vict. c.* 90), *s.* 29.

Appeal of plaintiff from the judgment of POLLOCK, B., in favour of the defendants at the trial with a jury.

The plaintiff's claim was for a writ of mandamus to restore his name in the medical register, and damages for removing it therefrom; and, secondly, an injunction against, and damages for, printing and publishing of him that he had been guilty of infamous conduct.

The defence was, as to the first head of claim, that the plaintiff, after due inquiry, was adjudged by the defendants to have been guilty of infamous conduct in a professional respect; and, as to the other, that the words complained of were published on a privileged occasion.

Jelf, Q.C., and *Macaskie* for the plaintiff.

The Attorney-General (*Sir R. Webster*), *Kennedy, Q.C.*, and *M. J. M. Mackenzie* for the defendants.

Their LORDSHIPS held that the publication by the General Council of Medical Education and Registration of their resolution giving the ground of their directing, under section 29 of the Medical Registration Act, 1858, the erasure of the name of a medical practitioner from their register for conduct in their opinion infamous is privileged if made in good faith and without improper motive.

Appeal dismissed.

Solicitors: Harper & Battcock for plaintiff; Warren, Gardner & Murton for defendants.

Court of Appeal.
LORD ESHER, M.R.
LINDLEY, L.J.
BOWEN, L.J.
June 27. July 13.

BECK AND OTHERS *v.* PIERCE.

Husband and Wife—Liability for Ante-nuptial Debts of Wife—Previous Unsatisfied Judgment against Wife—Married Women's Property Act, 1882 (45 & 46 *Vict. c.* 75).

Appeal from judgment of GRANTHAM, J.

Action by a firm of solicitors to recover amount of bill of costs for work done for the defendant within six years previous to her marriage. After the marriage, action had been brought against her by the plaintiffs on the same bill, and judgment had been obtained against her separate estate, but it was found that she had no

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separate estate. The defendant admitted he had received with his wife assets more than sufficient to satisfy the plaintiffs' claim, but contended that the judgment against his wife, although it had not been satisfied, was a bar to any action against him. He also relied on the Statute of Limitations as to part of the debt. Grantham, J., gave judgment for the defendant.

Henn Collins, Q.C., and *Clare* for plaintiffs.

Bigham, Q.C., and *Carver* for defendant.

Cur. adv. vult.

Their LORDSHIPS allowed the appeal, and entered judgment for the plaintiffs for the amount sued for, less 33*l.* 1*s.* which they found to be barred by the Statute of Limitations. The Married Women's Property Act, 1882, has materially altered the position of husbands and wives towards the creditors of wives, and the rights of creditors of women who marry before they have paid their debts are totally different from what they were at common law. A husband can now be sued for his wife's antenuptial debts without her, and whether she were alive or dead (45 & 46 Vict. c. 75, ss. 14, 15). He can also be sued with her, but in this case the judgments might be separate, although to the extent to which they were both liable the judgment might be 'a joint judgment against the husband personally and against the wife as to her separate property.' The husband's liability is no longer unlimited as at common law; it is limited to the value of his wife's property which he might have acquired, and as between her and him he is entitled to be indemnified out of her separate property. The husband's liability is, therefore, not a joint liability, since he cannot require his wife to be joined, and, consequently, notwithstanding the judgment obtained by the plaintiffs against the defendant's wife, as that judgment was wholly unsatisfied, the action against the present defendant was clearly maintainable. As to the Statute of Limitations, the plaintiffs' cause of action against the defendant was founded on the wife's contract, and was not the defendant's marriage. The defendants would, therefore, avail themselves of the Statute of Limitations as to so much of the plaintiffs' demand as accrued to them against the defendant's wife more than six years before the commencement of the present action.

Solicitors: Chester & Co. (for Chapman, Roberts & Beck, Manchester) for plaintiffs; Hamlin, Granmer & Hamlin (for Brighouse, Brighouse & Jones, Southport) for defendant.

HIGH COURT OF JUSTICE.

Chancery Division. Kay, J. July 13. } *In re* BROOSHOOFT'S SETTLEMENT.

Lands Clauses Consolidation Act, 1845—*Railway Company — Compulsory Purchase — Costs — Subsequent Dealings with Land taken by Company.*

Where a railway company takes land compulsorily, under its powers, and the purchase-money is paid into Court, the company must pay the costs of all parties, even in a case in which, subsequent to the payment in, the tenant-for-life had exercised a testamentary power of appointment, in consequence of which it became necessary to serve the petition upon the trustees of the marriage settlements of the appointees.

Renshaw, Q.C., and *E. Martin; J. H. Gugson; Colt; Curtis Price* and *Davenport* for the parties.

Solicitors: Chester, Mayhew, Broom & Griffith (agents for Watson, Easam & Co., Sheffield); F. B. Moss (agent for Moss, Lowe & Co., Hull); Stoneham & Sons.

Chancery Division. Chitty, J. July 10, 11. } *In re* READ & GRESWELL'S DESIGN.

Design—New or Original—Rectification of Register—Patents, Designs, and Trade-marks Act, 1883, *ss.* 47, 60.

A trader registered a design representing a chrysanthemum in class 5 of goods under the Designs Rules, 1883, sched. 3—viz. 'articles composed wholly or partly of paper (except hangings).' Afterwards another trader registered a similar design in class 12 of goods—viz. 'goods not included in other classes.' Both traders were manufacturing and selling candle-shades made according to their designs.

On an application by the first trader to rectify the register by expunging the entry of the second design,

Morton Daniel and *George White* for the parties.

CHITTY, J., held that, although by section 60 of the Act copyright in the first design was limited to the goods comprised in the class in which it was registered, a second and similar design could not be registered in another class of goods, such design not being 'new or original' as required by section 47 of the Act.

The entry was accordingly expunged.

Solicitors: Reader & Hicks; Tyrrell, Lewis & Co.

Chancery Division. Chitty, J. July 12. } *Re* TARRANT'S TRUSTS.

Wills Act (1 *Vict. c.* 26), *s.* 27—*General Bequest—Power of Appointment—Will not referring to Power.*

A testatrix was possessed of a power of appointment over a fund 'for such persons and purposes and in such manner as she should by will expressly referring to this present power appoint.' By her will she gave all her property generally to her executors upon trust as therein mentioned, but without referring to the power.

Romer, Q.C., and *Spence*; *Byrne, Q.C.*, and *Upjohn*; and *M'Swinney* for the parties.

CHITTY, J., held that the will did not operate under section 27 of the Wills Act as an appointment under the power. He did not adopt the decision of North, J., in *In re Marsh; Mason* v. *Thorne*, 57 Law J. Rep. Chanc. 639; L. R. 38 Chanc. Div. 630 (cf. *In re Phillips; Robinson* v. *Burke*, 58 Law J. Rep. 448; L. R. 41 Chanc. Div. 417).

Solicitors: Hudson, Matthews & Co.; Morgan, Son & Upjohn.

Chancery Division. North, J. July 2. } *Re* SMITH. HENDERSON-ROE *v.* HITCHINS.

Conveyancing Act, 1881, *s.* 43—*'Property held by trustee in trust for an infant'—Executor—Trustee.*

Adjourned summons.

A testatrix, by her will, after directing the payment of her debts and giving certain pecuniary legacies, left

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her residue to her cousin Dorothy Hitchins, and appointed an executor. The residuary legatee was an infant.

Grosvenor Woods for the executor.
Charles Browne for the infant.
Curtis Price for the next-of-kin.

NORTH, J., held that the executor was a trustee of the residue for the infant within the meaning of section 43 of the Conveyancing Act, 1881; and, consequently, had the power, given by that section, of applying the income of the residue for the infant's benefit.

Solicitors: Tamplin, Taylor & Joseph for the summons; J. L. Tomlin and Bowlings, Foyer & Hordern for the respondents.

Chancery Division. NORTH, J. July 3. } *In re* DIXON. BYRAM *v.* TULL.

Will—Construction—Married Woman.

T. G. Dixon, by his will, devised and bequeathed his residuary estate after his wife's death to 'William Byram Elizabeth Byram his wife Sarah Byram the wife of Henry Richards Jane Byram the wife of George Davis George Dixon Byram Cyrus Carter and Charlotte Carter his wife, to be equally divided between them, share and share alike.'

The testator died in 1882, his widow subsequently died, and the question arose whether Mrs. W. Byram and Mrs. Carter took separate shares, or whether each of them and her husband took only one share between them. In the former case the property would be divisible in sevenths, in the latter case in fifths.

Originating summons to determine this question.
Eve for Mr. and Mrs. Carter.
Ingpen for the other parties interested.

NORTH, J., held that Mrs. Byram and Mrs. Carter took distinct shares, and that the property was divisible in sevenths.

Solicitors: J. Nicholls & Co., Lowden.

Chancery Division. STIRLING, J. July 10. } STEEL *v.* STEEL.

Infant—Custody—Welfare of Infant—Paternal Right—Guardianship of Infants Act, 1886, *s.* 5.

These were two summonses taken out by a father and mother respectively to determine the right to the custody of their infant daughter. The parties were married in October, 1881, in England, but the father was a domiciled Scotchman. In August, 1882, a son was born. In February, 1884, the wife left her husband's home and did not subsequently return, and, in November, 1884, a daughter was born, who was the subject of these proceedings. The son resided with the father and the daughter with the mother. In 1885 proceedings were taken by the father to obtain the custody of his daughter before Kay, J., but his lordship, in October, 1886, declined to remove the daughter from the custody of the mother on account of its tender years, the mother undertaking that the father should have access to the child at all reasonable times. Shortly after these proceedings, the father obtained a divorce against his wife, in the Scotch Courts, on the ground of her desertion. There was no proof of any misconduct on the part of the father. The father now renewed his application for the custody of the child; the mother also made an application, under the Guardianship of Infants Act, 1886, for the same purpose. The child was in somewhat delicate health, and it was well cared for by the mother. On behalf of the father evidence was adduced tending to show that the child's health was likely to be benefited by residing in Perthshire, where the father lived.

Rigby, Q.C., Moulton, Q.C., and *H. Lake* for the father.

Buckley, Q.C., and *Ingle Joyce* for the mother.

STIRLING, J., refused to remove the child from the custody of the mother, having regard to its age, but he intimated that he might come to another decision if the father's application were renewed at some future time after the child had attained the age of seven years. Under section 5 of the Act of 1886, the welfare of the infant was the first consideration in determining the question of its custody, and, in his lordship's opinion, it could not be for the welfare of a child of four and a half years to be separated from its mother unless under very exceptional circumstances. The mother must continue the existing undertaking with regard to the access of the father, and must give a further undertaking to permit the child to visit the father at his residence for a fortnight or three weeks at a time, as the father might desire.

Solicitors: Lake, Beaumont & Lake; Currie, Williams & Williams.

Chancery Division. KEKEWICH, J. July 5. } THE COMBINED WEIGHING AND ADVERTISING MACHINE COMPANY (LIM.) *v.* THE AUTOMATIC WEIGHING MACHINE COMPANY (LIM.).

Patent—Threats—Infringement—Right of Action—Costs—Patents, &c. Act, 1883, *s.* 32.

By the Patents, &c. Act, 1883, s. 32, it is provided that 'where any person claiming to be the patentee of an invention, by circulars, advertisements, or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged manufacture, use, sale, or purchase of the invention, any person or persons aggrieved thereby may bring an action against him, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as may have been sustained thereby, if the alleged manufacture, use, sale, or purchase to which the threats related was not in fact an infringement of any legal rights of the person making such threats: provided that this section shall not apply if the person making such threats with due diligence commences and prosecutes an action for infringement of his patent.'

The defendant company being owners of a patent, on or about September 21, 1887, threatened the plaintiff company with penalties for alleged infringement of the patent. On September 27, 1887, the plaintiff company commenced the present action to restrain the threats, and on September 30, 1887, the defendant company commenced an action against the plaintiff company to restrain the infringement. They had some little time previously commenced, and were still prosecuting, an action for infringement of the patent against one

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Knight. The judge was satisfied that the infringement action between the present parties had been diligently prosecuted. The defendant company had not made any attempt to stay the present action, but had forced the plaintiff company to set it down for trial.

Warmington, Q.C., Morton Daniel, and *Firminger* for the plaintiff company.

Aston, Q.C., Neville, Q.C., and *R. Griffin* for the defendant company.

KEKEWICH, J., held that the action contemplated by the proviso in the section was an action in respect of the same infringement as that which had been the subject of the threats, and that the action against Knight did not satisfy the proviso, but that upon the infringement action against the plaintiff company having commenced, their right of action in respect of the threats was gone, and the defendant company were entitled to judgment. Since, however, the defendant company ought either to have sued for infringement by way of counter-claim, or endeavoured to stay proceedings in the threats action, no costs ought to be awarded to them.

Chancery Division. KEKEWICH, J. July 6. } *Re* WOOD. WOOD *v.* HOOPER.

Husband and Wife—Restraint on Anticipation—Settlement by Wife.

By deed poll, executed July 5, 1867, E. Hall, in exercise of a power of appointment, appointed that, after her death, the trustees of the will of J. Wood should stand possessed of certain trust premises as to a share therein for Mary Westhead, a spinster, for her separate use, without power of anticipation.

Mary Westhead was married in January, 1882, and, by an ante-nuptial settlement it was agreed that, in case the marriage should take effect, all the real and personal property of or to which she or her husband in her right should, on the death of E. Hall, become possessed or entitled under the will of J. Wood, or under any appointment made thereunder, should be conveyed to be held upon the trusts of the settlement.

E. Hall died in 1889.

Warmington, Q.C., and *Bramwell Davis; Neville, Q.C.,* and *W. Somers Browne* for the parties.

KEKEWICH, J., held that Mary Westhead had an absolute interest in the appointed property at the date of her settlement, and that the restraint on anticipation not having then arisen, the settlement trustees were entitled to the property.

Solicitors: North, Kirk & Cornett, Liverpool; Wood, Bigg & Nash (for Kitsons, Mackenzie & Hext), Torquay.

Queen's Bench Division. June 28. } REGINA *v.* WHITELEY.

Municipal Corporation—Officer of Corporation—Penalties Recovered against Officer—Payment of Officer's Expenses by Corporation—Proceedings to Set Aside Payment—Liability of Members of Corporation for Costs of Proceedings.

The corporation of Ramsgate, having adopted a drainage scheme drawn up by their surveyor, resolved to remunerate him by a percentage on the outlay. An action having been brought against the surveyor to recover penalties under section 193 of the Public Health Act, 1875, on the ground that he was 'interested in' the contracts, the corporation resolved to contribute 300*l.* towards the expenses of the surveyor. The Court having held the surveyor liable to the penalties, a rule for a *certiorari* was obtained to bring up the order of the corporation as to the surveyor's remuneration, and also the order for the payment of the 300*l.*, in order that they might be quashed, as being illegal and *ultrà vires.* The rule was made absolute, and the Court ordered that the prosecutors (the mayor, aldermen, and burgesses) should pay the costs of the application. A rule was afterwards obtained calling upon the members of the corporation to show cause why they should not personally pay the costs of the writ of *certiorari* and the proceedings thereupon.

Dickens, for the members of the corporation, showed cause.

T. W. Chitty, for the applicant, supported the rule.

The COURT (LORD COLERIDGE, C.J., and FIELD, J.) held that those members who voted in favour of the resolutions were personally liable for the costs of the writ of *certiorari* and the subsequent proceedings.

Rule absolute.

Solicitors: Kingsford, Dorman, & Co. (for Hills, Margate) for the applicant; Meredith, Roberts, & Mills (for Hubbard, Ramsgate) for the members of the corporation.

Probate, Divorce, and Admiralty Division. June 25. } IN THE GOODS OF MINSHULL.

Probate Act, 1857—*Section* 73—*Grant under Special Circumstances.*

By section 73 of the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), the Court may, under special circumstances, grant administration to some person 'other than the person who, if this Act had not passed, would have been entitled to the grant.'

Harriet Minshull, who died in the Marylebone Workhouse in November, 1883, was entitled in reversion to two sums of 200*l.* each, which did not become payable till 1888. To the first of these sums she was entitled under the will of her uncle, Samuel Minshull, to the other as next-of-kin of her sister, Elizabeth Grindlay, who died intestate.

The present applicant, Mary Frances Hall, was grand-niece of the deceased and of Elizabeth Grindlay. There was, however, a doubt about the legitimacy of Mrs. Hall's father, which, if correct, would invalidate her claim, and her cousin, a Mrs. Desmaret, residing in Paris, would be entitled to the 400*l.* The trustees under the will of Samuel Minshull had paid the money into the Chancery Division under the Trustees Relief Act, and an agreement had now been come to between Mrs. Hall and Mrs. Desmaret to divide the property between them, and that the Court should be asked to make a grant of administration to Mrs. Hall under the 'special circumstances' of the case by virtue of section 73 of the Court of Probate Act, 1857.

Searle, for Mrs. Hall, applied for a grant accordingly. He cited *In the Goods of Hopkins,* 44 Law J. Rep. Prob. & Mat. 42; L. R. 3 P. & D. 235.

Middleton, for Mrs. Desmaret, consented.

BUTT, J., made the order as prayed.

Solicitors: E. W. & R. Oliver for the applicant; Gush, Phillips & Co. for Mrs. Desmaret.

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HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
July 11.
} SERLE *v.* FARDELL.

Practice—Light and Air Action—Reference to Official Referee—Form of Order—Judicature Act, 1873, *s.* 57 *—Rules of Court*, 1883, *Order XXXVI., rules* 7, 48, 50.

This was a light and air case relating to property at Wapping, in which the plaintiff claimed a mandatory injunction and damages. There was no question as to the plaintiff's right to ancient lights.

Marten, Q.C., and *E. Boyle* for the plaintiff.

Millar, Q.C., and *Knowles Corrie* for the defendant.

On the case being opened, KAY, J., said that it was proper to refer cases of this kind to the official referee under the Judicature Act, 1873, s. 57, as the trial might be greatly assisted by local investigation, and made an order to the following effect: Direct the official referee to try the action, including particularly the following issues of fact, first, whether the defendant's new building has been raised higher than his old building; and, secondly, if so, whether such additional height materially damages the access of light to any and which of the ancient windows on the plaintiff's property. The official referee to have power to assess damages and to direct judgment to be entered, including costs.

Solicitors: Digby & Liddle for the plaintiff; Saffery, Huntley & Son for the defendant.

Chancery Division.
KAY, J.
July 11, 15.
} WHITBY *v.* MITCHELL.

Remainder—Limitation to Unborn Persons for Life with Remainder to her Children—Testamentary Power of Appointment—Void Limitation—Restraint on Anticipation—Remoteness.

By marriage settlement freehold lands were limited to the use of the husband and wife for life successively, with remainder to the use of a child, grandchild, or more remote issue of the husband and wife (such child, grandchild, or more remote issue being born before any such appointment as thereinafter mentioned should be made to him, her, or them), in such manner as the husband and wife should by deed appoint.

The husband and wife, in exercise of the power, appointed one moiety of the lands to the use of a married daughter for her life for her separate use, without power of anticipation, with remainder to the use of such persons as she should by will appoint, and, in default of appointment, to the use of her children living at the date of the deed of appointment.

This was an action by a mortgagee in which a question as to the effect of the appointment by the husband and wife arose.

Robinson, Q.C., and *Alexander Young* for the plaintiff.

Farwell for the daughter.

Marten, Q.C., and *Baker* for the daughter's children living at the date of the appointment.

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Renshaw, Q.C., and *Swinfen Eady* for other parties.

KAY, J., held that the only part of the appointment which was good was the limitation to the daughter for her life for her separate use. The ulterior limitations were void according to the rule stated in 'Williams on Real Property,' 9th edition, p. 263, and the restraint on anticipation annexed to the life estate must be rejected according to *Fry* v. *Capper* (Kay, 163).

Solicitors: Sanderson, Holland & Adkin; W. Montgomery White; Cowdell & Son.

Chancery Division.
KAY, J.
June 26. July 20.
Re LIDIARD AND JACKSON.

Copyholds — Seisure 'quousque' — Lapse of Seventy Years—Right to make an 'Entry' on Lands—Presumption of Enfranchisement—Statute of Limitations (3 & 4 Wm. IV. c. 27), s. 2.

Adjourned summons.

This was a summons taken out by the purchaser under the Vendor and Purchaser Act, 1874, as to whether certain requisitions had been properly answered. Amongst other requisitions the purchaser objected that part of the land which was contracted to be sold as freehold appeared to be of copyhold tenure, and on June 26 KAY, J., holding that this requisition had not been sufficiently answered, directed the summons to stand over generally, with liberty to apply.

July 20. The facts now in evidence were that the last tenant on the rolls died in 1819, since which date the land had been dealt with as freehold except that, in two recent deeds of 1878 and 1883, it was recited to be of copyhold tenure, and in one of them was covenanted to be surrendered accordingly. The lord of the manor was not party or privy to these deeds.

Marten, Q.C., and *T. A. Nash* for the purchaser.

Renshaw, Q.C., and *Wilkinson* for the vendor.

KAY, J., said that on the death of the last tenant in 1819 the lord's right to seise *quousque* arose, and if it were necessary to decide the point he should hold, in the absence of authority, that the lord's right to seise *quousque* was a right to make an entry within the Statute of Limitations, and, therefore, barred by section 2 of 3 & 4 Wm. IV. c. 27; but on the facts now before the Court he had no hesitation in holding that the land was treated as copyhold in the deeds of 1878 and 1883 by mistake, and in presuming an enfranchisement notwithstanding those deeds. The title was, therefore, a good one, but the requisition not having been answered in the first instance by the vendor, the purchaser was entitled to the costs of the summons on this point.

Solicitors: Robert Jenkins (agent for Thompson, Cook & Babington, Hull) for the purchaser; Lidiard & Son for the vendor.

Chancery Division.
KAY, J.
July 23, 24.
THE DUKE OF BUCCLEUCH *v.* EDEN.

Statute of Limitations—Absence of Defendant beyond the Seas—Accruer of Cause of Action—Acknowledgment—21 Jac. I. c. 16, s. 3; 4 Anne, c. 16, s. 19.

On July 24, 1882, Kerr, while in England, gave his promissory note, payable on demand, for 3,000*l.* to the late Duke of Buccleuch, which sum, however, was not advanced by the duke till September 8 following. Before September 8 Kerr went to America, and did not return to England till 1883. The money was advanced for the purpose of buying Kerr a seat in the New York Stock Exchange. On November 19, 1885, Kerr wrote to the plaintiff, who was the son and one of the executors of the late duke, a letter which, so far as material, was as follows: 'The great kindness of your father on every occasion, and more especially the money that he loaned me to purchase my seat in the New York Stock Exchange, place me now in your debt. . . . I must leave it entirely to your generosity whether you will have me liquidate the loan I have mentioned on the sale of my seat in New York.' Kerr afterwards sold his seat in 1887. Kerr having since died, the plaintiff, in December, 1888, brought this action against his executrix on the promissory note.

The defendant pleaded the Statute of Limitations.

Lumley Smith, Q.C., and *Paget*, for the plaintiff, contended, first, that the cause of action on the note did not arise till the money was advanced on September 8, 1882, when Kerr was beyond the seas, and therefore the Statute of Limitations did not begin to run till Kerr's return from America; and, secondly, that in any case the letter was a sufficient acknowledgment to take the case out of the statute.

Renshaw, Q.C., and *Herbert Roberteon, contrà.*

KAY, J., without deciding the first point, held that the letter was a sufficient acknowledgment to take the case out of the statute, and gave judgment for the plaintiff.

Solicitors: Nicholl, Manisty & Co. for the plaintiff; Frere, Forster & Co. for the defendant.

Chancery Division.
NORTH, J.
July 11.
In re QUIRK. QUIRK *v.* QUIRK.

Will—Construction—Gift of Residue—Joint Tenancy or Tenancy in Common.

Hannah Quirk by her will, dated May 8, 1869, directed her trustees, after the death of the last survivor of her seven children, to convert her residuary property and to 'pay and divide the same unto and equally between and amongst the issue of my said seven children in equal shares if more than one, as tenants in common, and their respective heirs, executors, and administrators; but the issue of any deceased child shall take only as a class, as if by representation of their parent, and not as individuals.' The testatrix died in 1871, and an action for the administration of the estate was subsequently commenced, on the further consideration of which the question was now raised whether the issue of a deceased child of the testatrix took their share as joint tenants *inter se*, or as tenants in common.

Seward Brice, Q.C., and *Carson* for the plaintiffs.

Higgins, Q.C., and *Grosvenor Woods* for persons representing deceased children of a deceased child.

Everitt, Q.C., and *Upjohn* for surviving children of a deceased child.

Cozens-Hardy, Q.C., and *Hough* for other parties.

NORTH, J., held that the issue of the deceased child took, on their parent's death, a vested interest as tenants in common, and that the representatives of the deceased issue took their shares.

Solicitors: Ullithorne, Currey and Villiers; Harrison and Powell.

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Chancery Division. North, J. July 20. } *In re* The Darton-upon-Humber and District Water Company (Lim.).

Waterworks Company — Undertaking for a Public Purpose — Winding-up — Jurisdiction.

This was a petition by a shareholder to wind up a waterworks company incorporated under the Companies Act, 1862.

Emden, for the petition, mentioned the case of *Blaker* v. *The Herts and Essex Waterworks Company*, 58 Law J. Rep. Chanc. 497; L. R. 41 Chanc. Div. 399, in which Kay, J., had refused to direct a sale of a waterworks company because it was an undertaking for a public purpose.

North, J., felt no difficulty in making the order asked for, although it might afterwards be necessary to obtain an Act of Parliament to enable the undertaking to be sold. In making the winding-up order he was not going in any way contrary to the views expressed by Kay, J., in the above case.

Chancery Division. Stirling, J. July 19. } *In re* The Mersina Adana Construction Company.

Company — Shares — Memorandum of Association — Power to accept Surrender of Shares — 'Ultra Vires.'

The Mersina Adana Railway Company was an Ottoman railway company, and the Mersina Adana Construction Company was an English company formed to construct the line, there being an agreement between the two companies that the construction company was to have the whole of the share capital and mortgage debt of the railway company allotted to it, and to subscribe at par for such capital. The construction company contracted with a firm of contractors, who were to make the railway in consideration of certain A shares in the construction company, which A shares were, so far as could lawfully be done, to be exchanged for shares in the railway company. The memorandum of association of the construction company provided that the company should have power 'to call in and exchange for fully paid-up shares in the said Ottoman company of equal nominal amount all or any of the A shares of the company so soon as the company shall be in a position to do so.'

This was a summons in the winding up of the construction company taken out by the contractors, who were entitled to 670 A shares, asking that, instead of shares in the construction company, shares in the railway company might be transferred to them.

The liquidator admitted having, as part of the assets of the construction company, sufficient shares in the railway company to satisfy the contractors' claim, but contended that the agreement to exchange such shares and the provision to that effect in the memorandum of association were *ultrà vires*.

Bramwell Davis for the liquidator.

W. B. Odgers for the contractors.

Stirling, J., held, upon the authority of *Trevor* v. *Whitworth*, 57 Law J. Rep. Chanc. 28; L. R. 12 App. Cas. 432, that the clause in the memorandum and the agreement for the surrender of the company's shares were *ultrà vires*, and the claim of the contractors failed.

Solicitors: Linklater & Co. for liquidator; Warburton & De Paula for contractors.

Chancery Division. Kekewich, J. July 6. } Davies *v.* Stanford.

Married Woman — Liability — Breach of Trust or Contract — Married Women's Property Act, 1882, *s.* 1, *subs.* 2.

In 1876 the defendant, a married woman, agreed to grant to Vaughan a lease of a plot of land, of which the defendant was owner in fee, when he should have built a house upon the land, and by the terms of the agreement Vaughan obtained an option of purchasing the fee.

In 1877 Vaughan assigned the agreement and the option to the plaintiffs by way of mortgage. In 1878 the defendant granted the fee to Vaughan, but without the knowledge of the plaintiffs, and Vaughan mortgaged the fee, also without their knowledge, to third parties.

In all the three transactions one and the same solicitor acted for all parties.

Barber, Q.C., and *E. Beaumont* for the plaintiffs.

Warmington, Q.C., and *Wace* for the defendant.

Kekewich, J., held that, assuming that knowledge of all the transactions was to be imputed to the defendant, she had not committed any tort, but was liable, if at all, upon a breach of trust or a breach of an implied contract; that she was under no such engagement as would bind a married woman's separate estate before the Married Women's Property Act, 1882, and that section 1, subsection 2, of that Act does not apply to engagements entered into previously to that Act coming into operation.

Solicitors: Munns & Longden; Day & Cather.

Chancery Division. Kekewich, J. July 18. } Gray *v.* Smith.

Vendor and Purchaser — Interest in Land — Statute of Frauds — Memorandum in Writing — Partnership — Agreement to Retire.

Upon an agreement for the retirement of one partner from a partnership, part of the property whereof consisted of leasehold land, the following memorandum was signed by the retiring partner:—

This is to record that in consideration of Gray (one of the continuing partners) or his executors paying to Bennitt (the retiring partner) or his assigns the sum of 100*l.* on January 1, 1890, and the sum of 100*l.* on every 1st of January for the nine succeeding years, Bennitt agrees to withdraw from the firm.

Gray, in this action, claimed specific performance of the contract.

Warmington, Q.C., and *Upjohn* for the plaintiff.

Henry Terrell for defendant Smith.

G. Curtis Price for defendant Bennitt.

Kekewich, J., held that the contract related to the disposal of an interest in land and required to be in writing, but that, upon the construction of the memorandum, it was clearly agreed that Bennitt should retire immediately, and that the requirement of the Statute of Frauds in respect of time for completion being stated was satisfied.

Solicitors: Torr, Janeways, Gribble & Oddie (for Dibb & Clegg, Barnsley); Indermaur & Brown (for F. W. Fisher, Doncaster); Pilgrim & Phillips (for Smith, Smith & Elliott, Sheffield).

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Queen's Bench Division. July 22. } DUBOUT & CIE *v.* MACPHERSON & Co.

Practice—Third Party Notice—Service of, out of the Jurisdiction—Order XVI., rule 48; *Order XI., rule* 1 (E).

This was an *ex parte* application for leave to issue a third party notice under Order XVI., rule 48, and serve it upon a third party in France, in the terms of Order XI., rule 1 (E), referred to the Court by the learned judge at chambers. The plaintiffs had brought an action against the defendants upon two bills of exchange, drawn by one G. Boisduval, who resided in France, and accepted on certain terms by the defendants in London, and purported to be indorsed by G. Boisduval to the plaintiffs. The defence was that the acceptance had been obtained by fraudulent misrepresentations, and the defendants claimed to be indemnified by the third party in respect of liability.

Raven, in support: Leave is sought to serve a third party notice upon G. Boisduval as a writ, or notice of a writ under subrule E of Order XI., rule 1, and it is desired that the application of this rule be so far enlarged as to include a third party notice. It is submitted that the principle of the decision of the Court of Appeal in *The Swansea Shipping Company* v. *Duncan*, 45 Law J. Rep. Q. B. 638; L. R. 1 Q. B. Div. 644, under the old rules still holds good.

The COURT (DAY, J., and SMITH, J.) held, upon the principle of the case cited, that the third party notice might now, under the Rules of the Supreme Court, 1883 (Order XI., rule 1 (E)), be served out of the jurisdiction as a writ, or notice of a writ, of summons.

Application granted.

Solicitor: Charles J. Cole.

Bankruptcy. CAVE, J. June 25. July 2. } *In re* HART & SON. *Ex parte* JAMES HART, JUN.

Bankruptcy—Practice—Debtor's Discharge—Liquidation under Bankruptcy Act, 1869 (32 & 33 *Vict. c.* 71), *s.* 125—*Closure of Liquidation—Subsequent Resolution to Discharge Debtor—Registration Refused—Bankruptcy (Discharge and Closure) Act*, 1887 (50 & 51 *Vict. c.* 66), *s.* 2.

This was an appeal to CAVE, J., from the refusal of both registrar and judge of a County Court to register a resolution and give a certificate of a debtor's discharge. It appeared that at a first meeting of creditors in 1882 a resolution was passed that the affairs of a debtor should be liquidated by arrangement. In 1884 a last meeting was held, when it was resolved that the discharge of the debtor be not granted, that the trustee be released, and the liquidation closed. In 1889 the official receiver, assuming to act as trustee in the liquidation under section 160 of the Bankruptcy Act, 1883, summoned, at the instance of the debtor, a meeting of the creditors, at which the debtor's discharge was resolved upon.

Sidney Woolf in support.

No counsel appeared in opposition.

Cur. adv. vult.

CAVE, J. (on July 2), held, affirming the learned County Court judge, that the application to the registrar to register this resolution and give a certificate of the debtor's discharge, as having been granted by a statutory majority at a general meeting of creditors, was rightly refused, and, a resolution being *ultrà vires*, the debtor's proper course was to have applied to the Court for his discharge under section 2 of the Bankruptcy (Discharge and Closure) Act, 1887.

Appeal dismissed.

Solicitors: Crowders & Vizard, agents for Browetts, Coventry.

Probate, Divorce, and Admiralty Division. July 2. } MACARTHUR *v.* MACARTHUR.

Restitution of Conjugal Rights—Demand to Return to Cohabitation—Petition—Rule 175—*Substituted Service.*

On June 6, 1887, the respondent left her husband, and, though he had taken great pains to find her, he was unable to do so.

B. Deane, for the petitioner, applied for substituted service of (1) the written demand for a return to cohabitation, which by rule 175 is required to be sent to the respondent before a petition for restitution of conjugal rights can be filed; (2) the citation; (3) the petition. He cited *Ex parte Sheehy*, L. R. 1 P. D. 423.

BUTT, J., held that substituted service for the written demand for cohabitation might be allowed, but that as to the citation and petition a further application ought to be made.

Order accordingly.

Solicitors: J. & W. Maude.

Probate, Divorce, and Admiralty Division. July 16. } GILLETT *v.* GILLETT.

Wife's Costs—Order to Pay Taxed Costs into Registry—Injunction to restrain Respondent from Receiving a Sum of 1,400*l.*

This was a wife's petition for dissolution of marriage, and on June 25 an order was made on the respondent to pay the amount of the petitioner's taxed costs into the registry.

On June 27, 1887, the petitioner obtained a judicial separation from the police magistrate at Lambeth, and an order for alimony at the rate of 1*l.* per week.

The respondent was entitled to a sum of 1,400*l.* under the will of a Mrs. Sarah Oakes.

On July 2 BUTT, J., granted an injunction in chambers to restrain the respondent from receiving this sum of 1,400*l.* until the order had been complied with and certain arrears of the alimony ordered by the magistrate had been paid.

Searle (who, it was understood, moved in open Court in order to enable the respondent to go to the Court of Appeal) now moved to set aside the injunction, although the Court has power to make the injunction as far as it applies to the order for payment of costs which amount to 60*l.*; but it has no power to enforce the magistrate's order for alimony by injunction.

Walter, contrà: The magistrate's order amounts to a decree of judicial separation under the Matrimonial Clauses Act, 1878 (41 Vict. c. 19), s. 4.

BUTT, J., ordered the injunction to be continued until the trial of the action.

Solicitors: Maynard & Son for the petitioner; Hicks & Arnold for the respondent.

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HIGH COURT OF JUSTICE.

HOUSE OF LORDS.

House of Lords. July 25. } THE LANCASHIRE AND YORKSHIRE RAILWAY COMPANY v. THE MAYOR, &c., OF BURY.

Railway — Bridge — Highway — Liability of Railway Company to repair Roadway over Bridge—Railways Clauses Consolidation Act, 1845 (8 & 9 *Vict. c.* 20), *ss.* 46, 53, 56.

This was an appeal from a decision of the Court of Appeal (reported 57 Law J. Rep. Q. B. 280), which affirmed one of a Divisional Court.

Sir R. E. Webster, Q.C., Attorney-General, and *W. Graham* (*R. Henn Collins, Q.C.*, with them) for the appellants.

Sir Charles Russell, Q.C., and *R. S. Wright*, for the respondents, were not called upon.

Their LORDSHIPS (LORD HERSCHELL, LORD FITZGERALD, and LORD MACNAGHTEN) dismissed the appeal, with costs.

Solicitors: Clarke, Woodcock & Ryland (for C. Moorhouse, Manchester) for appellants; Andrew, Mellor & Smith (for J. Haslam, Town Clerk, Bury) for respondents.

House of Lords. July 25, 26. } NEWBOULD v. SMITH.

Statute of Limitations—Mortgage—Transfer of Equity of Redemption—Subsequent Payment of Interest by Former Mortgagor—Evidence—Entry in Deceased Person's Ledger—Entry against and for Interest—Admissibility.

This was an appeal from a decision of the Court of Appeal, reported 55 Law J. Rep. Chanc. 788.

W. Barber, Q.C., and *Gould* for the appellant.

Warmington, Q.C., and *Yarborough Anderson*, for the respondent, were not called upon.

Their LORDSHIPS (LORD HERSCHELL, LORD FITZGERALD, and LORD MACNAGHTEN) were of opinion that the entry relied upon by the appellant, if admissible, was insufficient to prove his case, and dismissed the appeal, with costs.

Solicitors: Geare, Son & Pease (for B. Wake & Co., Sheffield) for the appellant; Munton & Morris for the respondent.

House of Lords. July 29, 30. } SOPER (PAUPER) v. ARNOLD.

Vendor and Purchaser—Contract for Sale—Approval of Title—Default of Purchaser—Defect in Vendor's Title.

This was an appeal from a decision of the Court of Appeal, reported 57 Law J. Rep. Chanc. 145.

J. M. Rigg (*Thorne* with him) for the appellant.

W. Barber, Q.C. (*Vernon R. Smith* and *R. Kemp* with him) for the respondents.

Their LORDSHIPS (LORD HERSCHELL, LORD FITZGERALD, and LORD MACNAGHTEN) dismissed the appeal.

Solicitors: Granville, Smith & Co. (for J. & T. Hutchings, Teignmouth) for appellant; Lovell, Son & Pitfield for respondents.

COURT OF APPEAL.

Court of Appeal. COTTON, L.J. FRY, L.J. LOPES, L.J. July 29. } *In re* ROWE. JACOBS v. HIND.

Administration—Residuary Account—Bequest—Declaration of Trust—Statute of Limitations (37 & 38 *Vict. c.* 57), *s.* 8.

Appeal from a decision of KEKEWICH, J.

A testatrix, who died in June, 1870, bequeathed her residuary personal estate to her nephew, J. H., absolutely, and appointed her sister executrix.

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The sister proved the will in October, 1871, and, being apparently under a misapprehension that the testatrix died intestate as to her residuary estate, she signed and sent in a residuary account which contained the following declaration: 'I do declare that the foregoing is a just and true account, and I offer to pay the sum of 18*l.* for the duty after the rate of 3*l.* per cent. upon the sum of 607*l.*, being the said residue and moneys to which I am entitled and intend to retain to my own use and for the use of J. H., being a sister and a descendant of a brother of the deceased.'

The sister and the nephew were in fact the persons entitled as next-of-kin under the statute. Both the parties having died, an action was brought in 1887 by the administratrix of the nephew against the executor of the sister for an account of the personal estate of the testatrix come to the hands of the sister.

The defendant claimed the benefit of the Statute of Limitations (38 & 39 Vict. c. 57), s. 8.

KEKEWICH, J., held that the declaration at the foot of the residuary account did not amount to a declaration of trust by the sister in favour of the nephew, and dismissed the action.

The plaintiff appealed.

S. Hall, Q.C., and *Boome* for the appellant.

Warmington, Q.C., and *Upjohn* for the respondent.

Their LORDSHIPS dismissed the appeal.

Solicitors: Anthony Pulbrook for appellant; Pearce & Sons for respondents.

Court of Appeal.
COTTON, L.J.
FRY, L.J.
LOPES, L.J.
July 29, 30.

PRICE *v.* MANNING.
MANNING *v.* PRICE.

Practice—Right to Cross-examine own Witness.

When a party to an action has called a witness, he is not entitled, as of right, to cross-examine that witness, even if that witness is a hostile litigant. The presiding judge has a discretion whether he will allow the witness to be cross-examined.

Charles v. *Suffery*, Reg. & M. 126, commented on.

Stokes for appellant.

Marten, Q.C., and *Vernon Smith* for respondent.

Solicitors: A. G. Dutton for appellant; Badham & Williams for respondent.

Court of Appeal.
LORD ESHER, M.R.
LINDLEY, L.J.
BOWEN, L.J.
July 29, 30.

THE CANADA SHIPPING COMPANY *v.* THE BRITISH SHIPOWNERS' MUTUAL PROTECTION ASSOCIATION.

Marine Insurance—Mutual Marine Association—Rules—Damage to Cargo—Improper Navigation—Improper Stowage—Foul Condition of Vessel.

Appeal from a judgment of CHARLES, J., reported 58 Law J. Rep. Q. B. 343.

Under the rules of a mutual insurance association the plaintiffs were entitled to protection in respect of loss of or damage to any goods on board of a certain ship caused by the improper navigation of such ship. The rules also provided that no claim should be made for any damage to cargo where the same should have been caused by improper stowage. A cargo of wheat was shipped on board the vessel and damaged in transit, owing to the fact that a portion of the hold was tainted by paraffin carried on a previous voyage. The consignee rejected the cargo, and the plaintiffs sustained loss.

CHARLES, J., held that the damage arose from improper stowage and not from improper navigation of the ship within the meaning of the rules.

The plaintiffs appealed.

Gorell Barnes, Q.C., and *Carver* for plaintiffs.

Cohen, Q.C., and *Joseph Walton* for defendants.

Their LORDSHIPS dismissed the appeal.

Solicitors: Rowcliffes, Rawle & Co. (for Hill, Dickinson & Co., Liverpool), for plaintiffs; W. A. Crump & Son for defendants.

Court of Appeal.
COTTON, L.J.
FRY, L.J.
LOPES, L.J.
July 30.

In re THE 163RD STARR BOWKETT BUILDING SOCIETY AND SIBUR'S CONTRACT.

Vendor and Purchaser—Conditions of Sale—Right to Rescind—Unwillingness.

Appeal from decision of CHITTY, J., reported 58 Law J. Rep. Chanc. 459.

Byrne, Q.C., and *G. T. Millar* for appellant.

Romer, Q.C., and *G. Henderson*, for respondents, were not called upon.

Their LORDSHIPS dismissed the appeal, with costs.

Solicitors: Birt & Follett for purchasers; Burgoyne, Watts & Co. for vendors.

HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
July 30.

In re THE ALEXANDRA PALACE AND PARK COMPANY (LIM.).

Company—Winding-up—Provisional Liquidator—Power to carry on Business—Power to Borrow—Charge on Assets—Terms of Order.

On July 27, KAY, J., made an order appointing a provisional liquidator with liberty to borrow 500*l.* for the purpose of carrying on the business of the company pending the hearing of a winding-up petition.

Dauney now applied *ex parte* as to the terms in which the order should be drawn up.

KAY, J., directed the order to be drawn up with a direction against the liquidator entering into any new arrangements without the leave of the Court, and that the moneys borrowed pending the hearing of the winding-up petition should be a first charge on the undertaking.

Solicitors: Markby Stewart & Co.

Chancery Division.
CHITTY, J.
July 27.

In re THE MYSORE WEST GOLD MINING COMPANY (LIM.).

Practice—Arbitration—Examination of Witnesses—Companies Act, 1862, *ss.* 161, 162—*Rules of Court*, 1883, *Order XXXVII., rule* 5.

Where a company has passed resolutions for voluntary liquidation and reconstruction, and an arbitration to value the interest of a dissentient shareholder is

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proceeding under section 162 of the Companies Act, 1862, the Court has jurisdiction, on the application of the parties in the arbitration, to make an order under Order XXXVII., rule 5, for the issue of a commission abroad for the examination of witnesses.

Byrne, Q.C., and *Grosvenor Woods* and *Emden* for the parties.

Solicitors; Snell, Son & Greenip; Trinders & Co.

Chancery Division. CHITTY, J. July 30. } *In re* THE SOVEREIGN LIFE ASSURANCE COMPANY.

Life Assurance Company—Transfer of Business—Scheme — Policyholders — The Life Assurance Companies Act, 1870, *s.* 14.

In August, 1887, a petition was presented by a policyholder for the compulsory winding up of this company, which stood over from time to time in the hopes that some scheme of arrangement might be adopted.

The company was incorporated in 1885 under a deed of settlement which contained no power to transfer the business to another company, though it contained a power enabling a majority of two-thirds of the shareholders to vary and add to its provisions.

In 1865 the company had taken over the business of the General Annuity Endowment Association, and given a guarantee for payment of the annuities. A scheme had recently been proposed by the policyholders for transferring the policies *en bloc* to another company on certain terms advantageous to the policyholders, though no provision was proposed to be made for the annuitants. On the petition now coming on for hearing, application was made by the directors, at the instance of the policyholders, for leave to present a petition, under section 14 of the Life Assurance Companies Act, 1870, to obtain the sanction of the Court to the proposed arrangement, and that in the meantime the hearing of the winding-up petition might again be postponed.

Whitehorne, Q.C., and *Boome* for the petition.

Sir A. Watson, Q.C., and *Chadwyck-Healey*, for 80 per cent. of the shareholders, opposed the scheme, and supported the petitioner, as did also *Maclean, Q.C.*, and *Devonshire*, for the annuitants.

Trustram, for a policyholder, and *Ribton*, for a shareholder, also opposed.

Romer, Q.C., and *Hall*, for the provisional liquidator, pointed out technical objections to the scheme.

Latham, Q.C., and *Whinney*, for the directors, *Swinfen Eady*, for the policyholders, and *Dauney*, for a deceased policyholder, supported the application of the directors.

CHITTY, J., considered it clear that section 14 of the Life Assurance Companies Act, 1870, was not an enabling section and conferred no power on a life assurance company to transfer its business to another company. The deed of settlement contained no power to transfer the business, and, in the face of the opposition by 80 per cent. of the shareholders it was not very likely that the requisite majority of two-thirds would be obtained to alter the deed of settlement. The annuitants were also, in his lordship's opinion, within the definition of 'policyholder' as defined by section 2 of the Act, and their dissent would, under section 14, be fatal to the scheme. Another objection to the scheme was that part only of the 'assurance business' was to be transferred, whereas section 14 only contemplated the transfer of the whole of the business; for these reasons the proposed scheme was impracticable and impossible, and as there appeared to be no sufficient reason for any further delay, he had no alternative but to make the usual winding-up order.

Solicitors: James Robinson; Witham Lambert & Roskell; R. C. Devonshire & Monkland; Hepburn, Son & Cutliffe; Eardley, Holt & Hulbert; Linklater & Co.; W. H. Mason & Son.

Chancery Division. NORTH, J. July 22. } *Re* PRYTHERCH. PRYTHERCH *v.* WILLIAMS.

Mortgagor and Mortgagee—Legal Mortgagee in Possession—Judicature Act, 1873, *s.* 5, *subs.* 8—*Receiver.*

This was the trial of an action, with witnesses, by a person beneficially interested under the will of a testator against the trustees of the will, a solicitor named Bishop, who had acted for the trustees, and others.

The plaintiff alleged that the trustees had raised, by legal mortgages of the testator's real estate, sums largely in excess of what they were entitled to raise by mortgage. The mortgages had been transferred to Bishop, and he was mortgagee in possession.

Bishop, by his counter-claim, claimed (amongst other things) the appointment of a receiver.

Higgins, Q.C., and *C. Walker* for the plaintiff.

Cozens-Hardy, Q.C., and *O. L. Clare* for the trustees.

Everitt, Q.C., and *Edward Ford* for Bishop.

Upjohn and *Waggett* for other parties.

NORTH, J., held that the trustees had raised, by mortgage of the real estate, more than they were entitled to raise; and that Bishop could stand as mortgagee only for the amount properly raisable. He held, also, that a mortgagee in possession is not entitled to go out of possession when he pleases; nor, as a matter of right, to have a receiver appointed at the expense of the persons entitled to the equity of redemption.

Solicitors: Berkeley & Calcott, for the plaintiffs; Burton, Yeates & Co.; Tucker & Lake; Crowdy, Son & Tarry; and Clarke, Rawlins & Co. for the defendants.

Probate, Divorce, and Admiralty Division. July 9. } IN THE GOODS OF ANN PRIDHAM.

Administration Oath—Application for Leave to Vary.

This was an application on behalf of John Dymond to vary the oath to be taken by him as proposed administrator to the estate of Ann Pridham, deceased, by swearing only to 'his belief' that the said Ann Pridham died a widow.

Ann Pridham died at Teignmouth, in the county of Devon, intestate, without parent or child, and, it is believed, a widow. The deceased had for many years been housekeeper to a Mr. Wylie, of Teignmouth.

On January 24, 1860, being then in Mr. Wylie's service, she had married John Pridham, a sailor, who left her to go to sea after a short time, during which period

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they lived very unhappily together. After he went to sea, Ann Pridham returned to Mr. Wylie's service, where she remained until she died. She last heard of her husband more than twenty years before the date of the present application, when she sent him some money to the North Shields Infirmary, where he was then an inmate. He had long been believed to be dead.

At the time of her death her sole next-of-kin entitled in distribution were two brothers, one in America and one in New Zealand, and two nieces.

It had been arranged that letters of administration should be taken out by the brother in Australia, and he had appointed John Dymond, Nonconformist minister, of Exeter, his attorney, for the purpose of taking the grant.

Laing now moved that John Dymond be allowed to vary the administration oath by swearing that he 'believed' the said deceased to be a widow.

A similar application was granted in *In the Goods of Reed*, 29 L. T. 932, where the mother of and sole forthcoming next-of-kin of an intestate was allowed, in 1874, to swear to her belief in her husband's death, she not having heard of him since the year 1852.

(Butt, J., inquired if the case was reported elsewhere, and was informed that it was not.)

BUTT, J.: The application is unusual, and I do not think I ought to act on the authority of a single case that is only reported in the *Law Times*. If it had been reported in the authorised reports or LAW JOURNAL it would have been a different matter. A citation must be issued in the usual manner.

Application refused.

Solicitor: R. H. Willcocks (for Jordan & Sons, Teignmouth).

Probate, Divorce, and Admiralty Division. July 23. } LISTER *v.* LISTER.

Maintenance—'Dum sola' Clause.

This was an application for maintenance after the marriage had been dissolved on the wife's petition. The registrar reported in favour of an allowance to the wife of 195*l.* per annum for her life, 'as long as she should remain unmarried.'

Inderwick, Q.C., for the wife, moved that the registrar's report be confirmed, with the omission of the words limiting the allowance to so long as she should remain unmarried.

Middleton, contrà.

BUTT, J.: If a man marries a young woman and then commits adultery, I think she ought to be compensated, and that the allowance should be continued during her life, whether married or single. I have set my face against the *dum casta* clause, and it seems to be now the settled practice to omit it. But my reasons for that do not apply to the *dum sola* clause. I do not think there ought to be any hard-and-fast rule, but that the judge ought to consider each case upon its merits. In the present case I shall confirm the registrar's report, striking out the clause objected to.

Order accordingly.

Solicitors: Lumley & Lumley for the husband; Roche & Son for the wife.

Probate, Divorce, and Admiralty Division. July 30. } IN THE MATTER OF THE APPEAL OF WILLIAM POWELL.

Order of Justices—Judicial Separation—Weekly Sum for Support of Wife—Further Evidence on Appeal——Offences against the Person Act (24 & 25 *Vict. c.* 100), *ss.* 42, 43; *Matrimonial Causes Act*, 1878 (41 & 42 *Vict. c.* 19), *s.* 4, *subs.* 2.

This was an appeal from an order of the justices for the borough of Carmarthen sitting in petty sessions, made by virtue of the Matrimonial Causes Act, 1878, s. 4, subs. 2, granting Mary Powell a judicial separation from her husband, William Powell, who had been convicted of an assault upon her, and further ordering the said William Powell to pay seven shillings a week for the support of the said Mary Powell.

A. T. Toller, for the appellant: The order of the justices is wrong (1), because they refused to allow the defendant to give evidence, either at the hearing of the application for judicial separation or as to his means; (2) because section 4 of the Matrimonial Causes Act, 1878, only allows such an order to be made against a husband who has been convicted of an aggravated assault, which is defined by section 43 of 24 & 25 Vict. c. 100. In the present case the defendant was only fined 20*s.*, and must therefore have been convicted under section 42 of the same Act, and not under section 43; in other words, he was only convicted of a common assault; and (3) subsection 2 of section 4 of the Matrimonial Causes Act, 1878, requires that the justices should be satisfied that the allowance ordered to be paid to the wife is within the means of the defendant. In the present case the justices not only refused to allow the defendant to give evidence as to his means, but at the time they made the order they had absolutely no evidence before them as to what his means were. (He then proposed to read certain affidavits as to the appellant's means, but Butt, J., stated that he would not under any circumstances hear any further evidence in an appeal from justices under the Matrimonial Causes Act, 1878, s. 4, subs. 2.)

Crosse, for the respondent, was not called upon.

The following cases were cited in argument: *The Attorney-General* v. *Radloff*, 23 Law J. Rep. Exch. 240; *Woods* v. *Woods*, not reported in LAW JOURNAL, L. D. P.; L. R. 10 P. D. 172; *Hetherington* v. *Hetherington*, 56 Law J. Rep. P. D. 78; L. R. 12 P. D. 112.

BUTT, J., held that the only proceeding before the justices was an inquiry whether or not the defendant had committed an aggravated assault—an inquiry of a purely criminal nature. The justices were therefore justified in refusing to hear the defendant's evidence.

Appeal dismissed, with costs.

Solicitors: Indermaur & Brown (for John James, Carmarthen) for the appellant; Crosse & Sons (for White, Carmarthen) for the respondent.

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Table of Cases.

HOUSE OF LORDS.

House of Lords.
May 20, 21, 23, 24, 27, 28, 31.
June 4.
Aug. 1.
} LYELL *v.* KENNEDY.

Recovery of Land—Limitation of Action for—Receipt of Rents by Agent—Ratification—Possession—Statute of Limitations (3 & 4 *Wm. IV. c.* 27), *ss.* 8, 34.

This was an appeal from a decision of the Court of Appeal (reported 56 Law J. Rep. Q. B. 303), which reversed in part a decision of STEPHEN, J.

Sir H. Davey, Q.C., and *Smyly* for the appellant.

Sir C. Russell, Q.C., and *Rigby, Q.C.* (*A. T. Lawrence* and *Robert Wallace* with them), for the respondent.

Cur. adv. vult.

Their LORDSHIPS (LORD HALSBURY, L.C., EARL OF SELBORNE, LORD FITZGERALD, and LORD MACNAGHTEN) reversed the decision of the Court of Appeal and restored that of Stephen, J., with costs.

Solicitors: J. Balfour Allan for appellant; Rooke & Sons (for Earle, Sons & Co., Manchester) for respondent.

COURT OF APPEAL.

Court of Appeal.
COTTON, L.J.
FRY, L.J.
LOPES, L.J.
Aug. 5.
} HEAP *v.* HARTLEY.

Patent—Exclusive License—Right to Sue—Patents Act, 1883, *s.* 36.

Appeal from the Vice-Chancellor of the Duchy of Lancaster.

A patentee by two deeds granted to the plaintiff an exclusive license to use and exercise the patented invention within a specified district and for a limited period, and covenanted not to grant any other license during that period in the same district; and he also authorised the plaintiff to use his name in case of infringement of the rights under the license. The deeds were duly registered under section 36 of the Patents Act, 1883. The patentee shortly afterwards sold two of the patented machines to a firm outside the district, who sold them to the defendants to be used within the district. There was a conflict of evidence on the question whether the defendants had notice of the plaintiff's license at the date of their purchase. The plaintiff sued the defendants in his own name, and without joining the patentee as co-plaintiff to restrain them from infringing his rights. The Vice-Chancellor held (1) that registration under the Patents Act was not notice to all the world; (2) upon the evidence, that the defendants had no actual notice of the license at the date of their purchase; and (3) that the defendants, as purchasers for value without notice, were not affected by the license, and he dismissed the action. The Vice-Chancellor also expressed a doubt whether an action for infringement could be maintained by an exclusive licensee without joining the patentee.

The plaintiff appealed.

Moulton, Q.C., and *Staffurth* for the appellant.

Cozens-Hardy, Q.C., and *Maberly* for the respondents.

Their LORDSHIPS, in dismissing the appeal, held (1) that notice had not been proved against the defendants; and (2) that, as the license was simply a license to do that which otherwise would have been a violation of the rights of the patentee, and was not a license coupled with a grant, it did not confer an interest on the licensee, and did not enable him to bring an action for infringement in his own name.

Solicitors: Roper & Briggs (Manchester), agents for Jacksons & Godby (Rochdale); Radford & Frankland for Bowden & Walker (Manchester).

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Court of Appeal.
COTTON, L.J.
FRY, L.J.
LOPES, L.J.
} PROCTER *v.* BAYLEY.

Patent—Infringement—Experimental Use abandoned—Injunction in Aid of Legal Right—Jurisdiction of Palatine Court.

Appeal from decision of the Vice-Chancellor of the Palatine Court.

The plaintiff, the owner of a patent the validity of which had been established in a previous action, brought an action against the defendant claiming an injunction and damages for the use of certain machines which infringed the plaintiff's patent. The defendant alleged that the machines complained of had been put up on trial, and, being found unsuccessful, had been taken down five years befor the plaintiff brought his action, and had been removed from the defendant's premises three years before the action, and he denied any threat or intention to use machines which infringed the plaintiff's patent.

The Vice-Chancellor granted an injunction and inquiry as to damages.

The defendant appealed.

Romer, Q.C., Rotch, and *Staffurth* for the appellant.

Marten, Q.C., and *Maberly* for the respondent.

Their LORDSHIPS held that, as there was no threat or intention proved on the part of the defendant to continue the infringement, the case for an injunction failed; as that failed the Palatine Court had no jurisdiction to give damages; the whole action therefore failed, and the appeal must be allowed.

Solicitors: Dangerfield & Blyth (agents for Hull, Son & Lord, Manchester) for the appellant; A. Macdonald Blair, agent for the respondent.

HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
July 29.
} *Re* WALL.
POMEROY *v.* WILLWAY.

Will—Construction—Charity—'Aged Persons'—'Deserving'—43 Eliz. c. 4.

Where a testator directed a fund to be divided into annuities of 10*l.* each, to be paid half-yearly to an equal number of men and women 'not under fifty years of age' attending certain Unitarian chapels, and that a tablet should be placed in one of the chapels to give information of the gift, 'otherwise how should the deserving know of it,' held that the gift was a good charitable gift, and that persons 'not under fifty years of age' were aged persons within the meaning of 43 Eliz. c. 4.

Christopher James for the executor.

Ingle Joyce for the Attorney-General.

Leigh Clare for the testator's widow.

Ryland for the next-of-kin.

Solicitors: Clarke, Woodcock & Ryland; Hare & Co. (agents for the Solicitor to the Treasury); Merediths, Roberts & Mills (agents for Vassall, Parr, Osborne & Ward, Bristol).

Chancery Division.
KAY, J.
July 30, 31.
} LONGBOTHAM *v.* SHAW.

Patent Action—Costs of Particulars—Certificate—Patents, Designs, and Trade-marks Act, 1883 (46 & 47 *Vict.* c. 57), *s.* 29, *subs.* 6.

Adjourned summons.

This was an action against the defendant for the infringement of the plaintiff's patent. The action had been dismissed with costs without hearing the evidence for the defendant, on the ground that the plaintiff's specification was too wide. The defendant had delivered particulars of objections with his statement of defence, and at the trial his counsel asked the judge to certify that these particulars were reasonable and proper under section 29, subsection 6, of the Patents, Designs, and Trade-marks Act, 1883, which the judge refused to do. On taxation, however, the taxing-master in taxing the costs of the defendant allowed various costs relating to the particulars, including the cost of their preparation. This was a summons by the plaintiff to vary the taxing-master's certificate by disallowing the defendant any costs in respect of the particulars.

Aston, Q.C., and *W. J. Waugh* for the plaintiff.

Goodeve for the defendant.

KAY, J., said that the terms of section 29, subsection 6, were precise, and that in the absence of a certificate the defendant could not be allowed any costs in respect of any particulars, and varied the certificate accordingly.

Solicitors: Emmet, Son & Stubbs for the plaintiff; Van Sandau (agent for Mills & Bibby, Huddersfield), for the defendant.

Chancery Division.
KAY, J.
Aug. 6.
} *In re* THE UNION PLATE-GLASS COMPANY (LIM.).

Company—Reduction of Capital—Resolution for Reduction of Ordinary Shares alone—Companies Act, 1867 (30 & 31 *Vict.* c. 131), *ss.* 9, 11; *Companies Act,* 1877 (40 & 41 *Vict.* c. 26), *s.* 3.

This was a petition under the Companies Acts, 1867 and 1877, that a special resolution for reduction of capital, and the reduction itself, might be confirmed by the Court. The proposed reduction did not involve any diminution of liability or the return of any paid-up capital, but it was proposed to reduce ordinary fully paid shares of 22*l.* 6*s.* to shares of 20*l.*, and to leave 3,000 shares of 10*l.* each, with 1*l.* paid, with a preferential 6*l.* per cent. dividend, unaffected by the reduction. There was no opposition by any ordinary shareholder.

E. S. Ford, for the petition, relied on the decisions of North, J., in *In re The Barrow Hematite Steel Company,* 58 Law J. Rep. Chanc. 148; L. R. 39 Chanc. Div. 589; and *In re The Quebrada Railway, Land, and Copper Company,* 58 Law J. Rep. Chanc. 332; L. R. 40 Chanc. Div. 363.

KAY, J., declined to follow the cases cited, and refused to confirm the reduction, holding that the company had no power under the Acts by special resolution to reduce its ordinary shares alone.

Solicitors: Byrne & Blakiston.

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Chancery Division.
CHITTY, J.
July 31.
CALLOW *v.* CALLOW.

Will—Construction—'Securities for money.'

Bequest of 'all money in the house and all securities for money, including a mortgage to Mr. S.' On the question whether this passed instalments of purchase-money for leaseholds sold by the testator under an agreement which provided that he was to execute an assignment on request and be given a mortgage for the instalments still owing, and that he was to have power to re-sell if the instalments were in arrear,

Byrne, Q.C., and *E. Clayton*, for the residuary legatee, cited *Goold* v. *Teague*, 7 W. R. 84; 5 Jur. (N. S.) 116; 32 L. T. (O. S.) 251, as deciding that 'securities for money' did not include a vendor's lien for unpaid purchase-money.

Romer, Q.C., and *Curtis Price*, for the legatee: That case has been doubted by Lord St. Leonards (V. & P. 14th ed. p. 684) and by Dart (V. & P. 6th ed. p. 827).

CHITTY, J., in holding that the instalments passed under the bequest, considered *Goold* v. *Teague* was distinguishable, but said that if it were directly in point he did not think he should follow it.

Solicitors: Boulton, Sons & Sandeman; Yarde & Loader.

Chancery Division.
CHITTY, J.
July 19. Aug. 2.
GULMOYE *v.* COWAN & BROWN.

Practice—Married Woman—Separate Property—Form of Judgment—Restraint on Anticipation—Married Women's Property Act, 1882, *s.* 1, *subs.* 2.

An order with costs made against a married woman, suing or sued under the Married Women's Property Act, 1882, as a *feme sole*, in respect of her separate property, must contain a restriction in the words of section 1, subsection 2, that the order is with costs payable out of her separate property and not otherwise, and a proviso limiting execution to her separate property, not subject to any restriction against anticipation. The form of judgment in *Scott* v. *Morley*, 59 Law J. Rep. Q. B. 43, p. 45; L. R. 20 Q. B. Div. 120, p. 132, followed and adopted. Money in the hands of a trustee for a married woman in respect of her separate property subject to a restraint on anticipation having accrued due subsequently to a judgment against her, held not to be liable to attachment by a judgment creditor.

Romer, Q.C., and *S. Woolf*; and *Upjohn* and *Blakesley* for the parties.

Solicitors: Arthur J. Benjamin, Geo. E. Philbrick, and Budd, Son & Brodie.

Chancery Division.
CHITTY, J.
Aug. 2.
Re ROBERTSON.

Practice—Taxation—Third Party Application—Delivery of Bill.

On a sale of copyholds it was agreed between B., the vendor's solicitor, and the purchaser that the copyholds should be enfranchised and the costs of enfranchisement borne by the purchaser. B. instructed a solicitor, R., to act in the enfranchisement, and R. accordingly delivered to B. his bill of costs in the matter, and B. delivered to the purchaser R.'s bill. The purchaser on a petition of course, containing the usual allegation that 'the solicitor (R.) had delivered to your petitioner his bill of fees, charges, and disbursements,' obtained an order for taxation.

Oswald for the motion to discharge the order for taxation.

Farwell contrà.

CHITTY, J., said that such an allegation of delivery of the bill was a material allegation, and was not satisfied by a merely constructive delivery. In cases where the bill was delivered not directly there should be a special application for taxation. The petition was therefore irregular, and the order must be discharged.

Solicitors: H. A. Farman; Frere & Co.

Chancery Division.
STIRLING, J.
Aug. 6.
In re SOPHIA SMITH.

Will—Construction—Gift between Nephews and Nieces and the Issue of such as should be Dead as Tenants in Common—Joint Tenancy or Tenancy in Common—'Issue.'

A testatrix, who died in February, 1857, by her will dated in November, 1856, bequeathed a sum of 5,000*l.* upon trusts for the benefit of her son for life and his children, and upon the failure of such trusts, which event happened, 'in trust for and to be equally divided between all and every my nephews and nieces (the children of two brothers therein mentioned) who shall be living at the time of the death of my said son as aforesaid, and the issue of such of them as shall then be dead leaving issue as tenants in common, such issue, nevertheless, taking only the share or respective shares which their deceased parent or parents would have taken if living.' The fund had been paid into Court by the trustees of the will under the Trustee Relief Act, and a petition was now presented by some of the beneficiaries for payment out. Two questions arose upon the petition—one, whether 'issue' ought to be read as children; the other, whether the issue took *inter se* as tenants in common or joint tenants.

Sebastian, for the petition, contended that the word 'issue' was confined to children, and that the issue took as joint tenants between themselves.

Trustram, for the legal personal representative of one of the issue who had died in the lifetime of the tenant-for-life, submitted that the issue took as tenants in common.

H. B. Hemming, *Waggett*, and *Wurtzburg* for other parties.

STIRLING, J., held, first, that 'issue' meant children; and, secondly, that, as there were double words of severance in the gift, the issue took as tenants in common. The first words, 'In trust for and to be equally divided between,' &c., if standing alone, would have created a tenancy in common between the nephews and nieces on the one hand and the issue on the other; but under those words the issue would have taken as between themselves only as joint tenants; but the words 'as tenants in common' applied to the issue as between themselves.

Solicitors: Cooper, Walker & Hall; Shaen, Roscoe, Massey & Henderson.

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Chancery Division. KEKEWICH, J. Aug. 2. } REINHARDT *v.* MENTASTI BROTHERS.

Injunction—Injury to Property—Nuisance—Reasonable Use of Premises.

The plaintiff, as lessee and occupier of a house in Coventry Street, London, claimed an injunction in respect of a nuisance. The defendants, the owners of premises immediately at the rear of the plaintiff's house, which had for many years been used as an hotel and were separated from the plaintiff's house only by a party-wall, had recently converted a basement chamber into a kitchen, and set up a stove and hot-air shaft there, with the result that the temperature of the adjoining wine-cellar in the plaintiff's house was so much increased as to render it impossible for the plaintiff to store his wine in that cellar as he had previously done.

It was admitted or proved that the use by the plaintiff and the defendants of their respective premises was reasonable.

Neville, Q.C., and *Wurtzburg* for the plaintiff.

Warmington, Q.C., and *Farwell* for the defendants.

KEKEWICH, J., held that the plaintiff's right to relief in respect of the nuisance did not depend upon his showing that the defendants' use of their premises was unreasonable; and that, having shown an injury caused by the defendants' operation, he was entitled to an injunction, with costs.

Solicitors: F. Halton; Fladgates.

Probate, Divorce, and Admiralty Division. July 23. } IN THE GOODS OF FAWCETT.

Administration 'pendente lite'—Court of Probate Act, 1857, s. 70.

Richard Fawcett, late of Ashtree House, Ilkley, in the county of York, died February 8, 1887, leaving a will, dated July 3, 1880, whereby he appointed Phœbe Fawcett and John Fawcett executors, and his sister, Ann Patton, and his nephews and nieces residuary legatees.

John Fawcett died in the testator's lifetime; Phœbe Fawcett duly proved his will in the district registry at Wakefield, April 15, 1887, and died November 15, 1888, leaving a portion of the estate of Richard Fawcett unadministered.

The said Phœbe Fawcett left a will, dated February 16, 1888, with respect to which an action was pending in the Probate Division at the time of the present application, in which Thomas Illingworth claimed as executor.

It had become necessary to complete the sale of certain property belonging to the estate of Richard Fawcett, which—the will of Phœbe Fawcett not being yet admitted to probate—was unrepresented.

Middleton now applied that William Butterworth, the defendant in the pending action respecting the will of Phœbe Fawcett, be appointed administrator *pendente lite* for the purpose of representing the estate of Richard Fawcett. He cited *In the Goods of Dawes*, L. R. 2 P. & M. 147; also a note by Mr. Registrar Jenner of an unreported case of *In the Goods of James Shepherd*, in which a similar order had been made by the President, Sir James Hannen, in October 1885.

Searle, contrà, contended that the Court had no power under the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 70, by which the authority to grant administration *pendente lite* is conferred to make the grant prayed for.

BUTT, J.: I very much doubt whether the Act of Parliament empowers the Court to make the order asked for by Mr. Middleton, and I question very much whether section 70 was brought to the notice of the President at the time he made the grant in the case of *In the Goods of James Shepherd*. But I shall follow the President, with this expression of my opinion that the case does not fall within the powers given by the Act. *Grant as prayed.*

Solicitors: Emmett, Son & Holmes (agents for Stubbs) for the applicant; Wynne Baxter & Keeble for Beldon & Ackwood, *contrà*.

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HOUSE OF LORDS.

COURT OF APPEAL.

HIGH COURT OF JUSTICE.

HOUSE OF LORDS.

House of Lords. Dec. 13, 14, 1888. June 6. Aug. 8, 1889. } THE GUARDIANS OF THE POOR OF REIGATE UNION *v.* THE GUARDIANS OF THE POOR OF CROYDON UNION.

Poor Law—Settlement—Child under Sixteen—Settlement of Widowed Mother—Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 *Vict. c.* 61), *s.* 35.

This was an appeal from a decision of the Court of Appeal, reported 56 Law J. Rep. M. C. 93.

Jelf, Q.C., and *Burleigh Muir* for the appellants.

Sir E. Clarke, Q.C. (*Solicitor-General*), and *Poland, Q.C.* (*F. Mead* with him), for the respondents.

Cur. adv. vult.

Their LORDSHIPS (LORD HALSBURY, L.C., LORD WATSON, LORD FITZGERALD, and LORD MACNAGHTEN) reversed the decision of the Court of Appeal, with costs.

Solicitors: Morrisons (for G. C. Morrison, Reigate) for appellants; West, King, Adams & Co. for respondents.

House of Lords. May 6, 7. Aug. 8. } THE GUARDIANS OF HIGHWORTH AND SWINDON UNION *v.* THE GUARDIANS OF UPTON-ON-SEVERN UNION.

Poor Law—Settlement—Child—Settlement of Widowed Mother—Emancipation—Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 *Vict. c.* 61), *ss.* 34, 35.

This was an appeal from a decision of the Court of Appeal, reported 57 Law J. Rep. M. C. 33.

Lumley Smith, Q.C., and *R. Cunningham Glen* for the appellants.

H. D. Greene, Q.C., and *Fraser Macleod* for the respondents.

Cur. adv. vult.

Their LORDSHIPS (LORD HALSBURY, L.C., LORD WATSON, LORD FITZGERALD, and LORD MACNAGHTEN) reversed the decision of the Court of Appeal, with costs.

Solicitors: Few & Co. for the appellants; Wilkins, Blyth & Dutton for the respondents.

House of Lords. May 7. Aug. 8. } THE MEDWAY UNION *v.* THE BEDMINSTER UNION.

Poor Law — Settlement — Residence — Widow — Irremovability—Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 *Vict. c.* 61), *s.* 34.

This was an appeal from a decision of the Court of Appeal, reported 57 Law J. Rep. M. C. 129.

Sir E. Clarke, Q.C. (*Solicitor-General*), and *Kinglake* for the appellants.

Poole, Q.C. (*J. C. Wall* with him), for the respondents.

Cur. adv. vult.

Their LORDSHIPS (LORD HALSBURY, L.C., LORD WATSON, LORD FITZGERALD, and LORD MACNAGHTEN) affirmed the decision of the Court of Appeal, with costs.

Solicitors: Nickinson, Prall & Nickinson (for Prall & Son, Rochester) for appellants; Guscotte, Wadham & Daw (for O'Donoghue & Anson, Bristol) for respondents.

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House of Lords. July 16, 17. Aug. 9. } COLQUHOUN *v.* BROOKS.

Inland Revenue — Income-tax — Business carried on Abroad—Partner resident in England—Liability to Income-tax on Profits of Business not received in England—5 & 6 *Vict. c.* 35, *ss.* 100, 106, 108—16 & 17 *Vict. c.* 34, *s.* 2, *Schedule D.*

This was an appeal from a decision of the Court of Appeal, reported 57 Law J. Rep. Q. B. 439.

Sir R. Webster, Q.C. (*Attorney-General*), and *Sir E. Clarke, Q.C.* (*Solicitor-General*), (*A. V. Dicey* with them), for the appellant.

Sir H. James, Q.C., and *T. E. Scrutton* for the respondent.

Cur. adv. vult.

Their LORDSHIPS (LORD HALSBURY, L.C., LORD FITZGERALD, LORD HERSCHELL, and LORD MACNAGHTEN) affirmed the decision of the Court of Appeal.

Solicitors: Sir W. H. Melvill, Solicitor of Inland Revenue, for the appellant; Shepheards for the respondent.

House of Lords. July 18, 19. Aug. 9. } COOKE, SONS & Co. *v.* THE GOVERNOR AND COMPANY OF THE NEW RIVER.

Water Company — Water Supply — Charge — Meter — Rateable Value—Domestic Purposes—New River Company's Act, 1852 (15 & 16 *Vict. c. clx.*), *ss.* 35–41—*Waterworks Clauses Act*, 1847 (10 *Vict. c.* 17), *s.* 53.

This was an appeal from a decision of the Court of Appeal, reported 57 Law J. Rep. Chanc. 383.

Sir H. Davey, Q.C., and *Rigby, Q.C.* (*R. C. Dobbs* with them), for the appellants.

Sir R. Webster, Q.C. (*Attorney-General*), and *Warmington, Q.C.* (*Vaughan Hawkins* with them), for the respondents.

Cur. adv. vult.

Their LORDSHIPS (LORD HERSCHELL, LORD FITZGERALD, and LORD MACNAGHTEN) affirmed the decision of the Court of Appeal, with costs.

Solicitors: Phelps, Sidgwick & Biddle for the appellants; Thompson & Debenham for the respondents.

House of Lords. July 23, 25. Aug. 9. } BIRCH *v.* CROPPER AND OTHERS.

Company—Purchase of Undertaking—Surplus Assets—Preference and Ordinary Shares — Fully-paid and Partly-paid Shares—Companies Act, 1862—(25 & 26 *Vict. c.* 89), *ss.* 109, 133, *subs.* 1.

This was an appeal from a decision of the Court of Appeal, reported 57 Law J. Rep. Chanc. 809.

Sir H. Davey, Q.C., and *Cozens-Hardy, Q.C.* (*O. Leigh Clare* with them), for the appellants, who represented the ordinary shareholders.

Rigby, Q.C., and *Buckley, Q.C.* (*Swinfen Eady* with them), for the respondent Schofield, who represented the preference shareholders.

S. A. Sampson for the liquidators.

Cur. adv. vult.

Their LORDSHIPS (LORD HERSCHELL, LORD FITZGERALD, and LORD MACNAGHTEN) held that the surplus remaining after repayment of the amounts paid up on the shares ought to be divided among the shareholders, preferred and ordinary, in proportion to the nominal amount of the shares held by them respectively without regard to the amount which had been paid up thereon. Judgment of the Court of Appeal varied accordingly.

Solicitors: Cunliffes & Davenport (for T. E. Sampson, Liverpool) for the appellant; Cunliffes & Davenport (for Lingards, Manchester) for the liquidators; Burgess & Cosens (for Arthur Buckley, Manchester) for Schofield.

House of Lords. July 26, 27. Aug. 9. } THE OWNERS OF THE STEAMSHIP GRACIE *v.* THE OWNERS OF THE STEAMSHIP ARGENTINO.

Ship—Collision—Damages, Measure of—Verbal Agreement for Future Voyage—Remoteness.

This was an appeal from a decision of the Court of Appeal, reported 58 Law J. Rep. P. D. & A. 1.

Finlay, Q.C., and *A. E. Nelson* for the appellants.

Sir W. G. F. Phillimore and *H. F. Boyd* for the respondents.

Cur. adv. vult.

Their LORDSHIPS (LORD HERSCHELL, LORD FITZGERALD, and LORD MACNAGHTEN) affirmed the decision of the Court of Appeal, with costs.

Solicitors: Lowless & Co. for appellants; Downing, Holman & Co. for respondents.

COURT OF APPEAL.

Court of Appeal. COTTON, L.J. FRY, L.J. LOPES, L.J. July 30. Aug. 1, 8. } TUCK *v.* THE SOUTHERN COUNTIES DEPOSIT BANK.

Bill of Sale—Unregistered Deed of Gift—Subsequent Registered Bill of Sale—'True owner'—Priority—True Copy—Wrong Date—Bills of Sale Act, 1878 (41 & 42 *Vict. c.* 31), *ss.* 4, 8, 10; *Bills of Sale Act*, 1878, *Amendment Act*, 1882 (45 & 46 *Vict. c.* 43), *ss.* 5, 6.

Appeal from decision of KAY, J., noted *ante*, p. 66.

Muir Mackenzie and *H. Reed* for appellants.

J. G. Butcher for respondent.

Muir Mackenzie replied.

Cur. adv. vult.

Their LORDSHIPS held that the deed of assignment to the plaintiff was a bill of sale, and required registration under the Bills of Sale Act, 1878, but held, by COTTON, L.J., and FRY, L.J. (LOPES, L.J., *dissentiente*), that at the time of the execution of the second bill of sale it could not be said that the grantor was the 'true owner' of the chattels therein comprised, and, therefore, under section 5 of the Act of 1882, it was void as against the plaintiff.

Appeal dismissed.

Solicitors: Prince & Ayres for the appellants; FOX & Ledsam for the respondent.

Court of Appeal. COTTON, L.J. FRY, L.J. LOPES, L.J. } *In re* HENRY POUND, SON & HUTCHENS.

Company — Winding-up — Receiver Debenture-holder — Appointment of Receiver under express Power—Right to Possession of Property of Company.

Appeal by debenture-holders from a decision of KAY, J., noted *ante*, p. 92.

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Rigby, Q.C., Renshaw, Q.C., and *Theobald* for appellants.

Marten, Q.C., and *John Chester contrà.*

Their LORDSHIPS reversed the decision, holding that the Court had no power to prevent the appointment by the debenture-holders of a receiver, or to refuse to give possession to such receiver of the property comprised in their security.

Solicitors: Linklater & Co. for appellants; Bonner, Wright, Thompson & Co. for liquidator.

HIGH COURT OF JUSTICE.

Chancery Division. KAY, J. Aug. 7. — *Re* WATERS. WATERS *v.* BOXER.

Will—Devise of Real Estate to A. for Life, and then on Trust to Sell—Legacy charged on Proceeds of Sale—Interest from Death of Tenant-for-Life.

Testator, by will dated March 7, 1882, gave his real estate to his widow for life, and after her death to trustees upon trust to sell and retain out of the proceeds of sale two several sums of 1,000*l.* each, with interest thereon respectively as thereinafter mentioned, and as to the residue of the said proceeds of sale on trust to divide the same into four shares and hold the same on the trusts therein mentioned. He then declared that one of the said sums of 1,000*l.*, together with simple interest thereon at 4*l.* per cent. per annum from May 4, 1876, up to the date of such retainer as aforesaid, should be held by the trustees on certain trusts for his daughter Mary Anne Brown and her children, and that the other sum of 1,000*l.*, with simple interest thereon, at the same rate from July 25, 1872, up to the date of such retainer as aforesaid, should be held by his trustees on trusts for his daughter Nancy Violet Taylor and her children. He then empowered his trustees to postpone the sale of his real estate after his widow's death, but not for more than three years; and he empowered them, during such interval, to manage his real estate, and directed that the net rents and profits should be applied in the same way as the annual income of the proceeds of sale thereof would be applied if the same were then sold.

The testator died on February 16, 1885, and his widow died on December 12, 1887.

The real estate was still unsold, and this was an originating summons taken out by the trustees to determine what interest was payable out of the rents and profits in respect of the two sums of 1,000*l.*

Martelli for the trustees.

Dunning for the persons interested in the residue.

Christopher James for Mrs. Browne and Mrs. Taylor.

KAY, J., held that interest at the rate of 4*l.* per cent. per annum was payable from the death of the testator's widow up to the time of sale on each aggregate amount consisting of 1,000*l.* and the interest thereon from the respective dates specified in the will up to the death of the widow, and made a declaration accordingly.

Solicitors: Martelli (agent for Burton & Sons, Great Yarmouth); Wilson, Bristowe & Carpmael; Whites & Co.

Chancery Division. KAY, J. Aug. 7. — *In re* DEAR. HELBY *v.* DEAR.

Will—Gift during Widowhood—Gift on Death to Children living at Death—Remarriage of Widow—Class when ascertained.

Testator by will, dated November 16, 1886, gave all his property to his wife in trust for the benefit of testator's children so long as his wife remained unmarried, and in the event of her marrying gave her a life interest in 2,000*l.* to be invested, and in the event of her death to be divided equally between his children. He then authorised advancements on loan to be made to his children, and continued: 'At my wife's death the estate then remaining is to be divided into four parts and the proceeds divided equally amongst the children then surviving.'

Testator died on November 20, 1886, leaving his widow and four infant children surviving. His widow remarried in June, 1889.

This was an originating summons, raising the question whether the children's interests in the residue were contingent on their surviving the widow, or vested on her marriage.

Marten, Q.C., and *Allen* for the widow.

Millar, Q.C., and *J. W. Williamson* for the children.

KAY, J., following *Bainbridge* v. *Cream*, 16 Beav. 25, and *Stanford* v. *Stanford*, 56 Law J. Rep. Chanc. 273, held that, in the events which had happened, the residue vested at once in the children of the testator living at the time of the widow's marriage.

Solicitors: Allen & Sons; Lawrence & Sons.

Chancery Division. KAY, J. Aug. 8. — *In re* SKEATS' SETTLEMENT. SKEATS *v.* EVANS.

Trustees—Power of Appointment—Appointment of Himself by Appointor—"Other person or persons"—Validity.

By marriage settlement made in 1882 property was assured to two trustees upon trust for the wife for life, for her separate use, without power of anticipation, and after her death on certain trusts in favour of the issue of the marriage, and the settlement provided that if any of the trustees should die, go abroad, desire to retire from, or refuse, or become incapable to act in the trusts, it should be lawful for the husband and wife during their joint lives, and the survivor of them during his or her life, and afterwards for the continuing trustee, or if none, then for the retiring or refusing trustee or the executors or administrators of the last acting trustee, to appoint any 'other person or persons' to be a trustee or trustees.

In 1889, the two existing trustees desiring to retire, the husband and wife, in exercise of the power, purported by deed to appoint the husband and another person as new trustees.

The retiring trustees questioned the validity of the appointment of the husband, and this summons was taken out to determine the question.

The husband was not beneficially entitled under the settlement.

G. E. Cruickshank for the summons.

Upjohn for the retiring trustees.

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KAY, J., held that the appointment was invalid—first, on the general ground that an appointor under a power of appointing trustees cannot appoint himself as trustee; and, secondly, on the special words of the power in this case, being of opinion that the words 'other person or persons' meant other than the person exercising the power, and not merely other than the retiring trustees.

Solicitors: Schultz & Son for all parties.

Chancery Division.
KAY, J.
Aug. 8.
EVANS *v.* LLOYD.

Practice—Receiver—Equitable Execution—Ex parte Application.

In this case an order had been made for the immediate payment to the applicant of a sum of 1,246*l.* Evidence was given that the person ordered to pay was possessed of certain equities of redemption in freehold and leasehold properties heavily mortgaged, which were of substantial value, but insufficient to satisfy the applicant's debt, and of a small balance at his bankers, and that he had executed in favour of his daughter a bill of sale by way of gift of the furniture in his house. It did not appear that he had any other property.

Yate Lee moved *ex parte* for the appointment of a receiver of the freehold and leasehold property subject to the mortgages. He submitted that it was a case in which a receiver ought to be appointed on an *ex parte* application. He referred to the Judicature Act, 1875, s. 25; 'Annual Practice,' pp. 626, 627; and *Ex parte Evans*, 49 Law J. Rep. Bankr. 7; L. R. 13 Chanc. Div. 252.

KAY, J., under the circumstances, made an order, on the applicants undertaking in damages and for the receipts of the receiver, for the appointment of a receiver forthwith until the first motion-day in vacation, with liberty to apply to continue the appointment after that day.

Solicitors: Storey & Cowland (agents for Crick & Freeman, Maldon, Essex).

Chancery Division.
STIRLING, J.
Aug. 8.
In re THE AMERICAN EXCHANGE IN EUROPE (LIM.).

Contempt—Pending Litigation—Newspaper Comments—Scienter—Liability of Printer.

This was a motion to commit M. for contempt of Court in printing and publishing, in the London edition of the *New York Herald*, statements which referred to proceedings pending in Court. There was a pending action by the plaintiff company, which was now in the course of being wound up, to which L. was made defendant. In the course of the winding-up proceedings L. was examined as to the affairs of the company, under an order made in pursuance of section 115 of the Companies Act. Immediately after the examination L. was interviewed by a gentleman connected with the *New York Herald*, and an account of the interview was published in that paper, which contained statements purporting to have been made by L. of what occurred in the examination. M.'s name appeared at the foot of the paper as the printer and publisher. In an affidavit filed by M. in this matter he denied all knowledge of the article complained of, and he stated that he was the foreman printer in the London office of the *New York Herald*, that his duties did not include reading over the matter which was printed, and that he had no means of knowing the contents of the paper, and he offered an apology to the Court.

Buckley, Q.C., and *H. Terrell* for the motion.

Levett for M.

STIRLING, J., said that it was most important that the liquidator should be able to obtain by these examinations full information as to the affairs of the company, and that he should be able to keep such information in his own hands. His lordship held that a contempt had been committed, and that M., as the person whose name appeared as the printer and publisher, was responsible for the contempt although ignorant of the contents of the paper, and he ordered him to pay the costs of the motion.

Solicitors: W. A. Colyer; Lewis & Lewis.

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HIGH COURT OF JUSTICE.

COURT OF APPEAL.

Court of Appeal.
COTTON, L.J.
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FRY, L.J.
Oct. 28.

In re THE COMBINED WEIGHING AND ADVERTISING MACHINE COMPANY.

Garnishor and Garnishee — Company — Winding-up— Right to present Petition—Companies Act, 1862, *s.* 82.

Appeal from a decision of NORTH, J.

A petition was presented for the compulsory winding up of the company by a person who had obtained a garnishee order absolute against a creditor of the company. The petitioner claimed as a creditor under section 82 of the Companies Act. North, J., dismissed the petition on the ground that the petitioner had no *locus standi*. The petitioner appealed.

Eve for the petitioner.

Firminger for the company.

George White for the shareholders.

Their LORDSHIPS, in dismissing the appeal, held that a garnishee order did not operate as a transfer of the debt due from the garnishee; and that, consequently, the petitioner was not a creditor of the company, and was not entitled to present a petition.

Solicitors: Norris, Allens & Chapman, for appellant; Perkins & Sawyer, for respondents.

Court of Appeal.
COTTON, L.J.
BOWEN, L.J.
FRY, L.J.
Oct. 29.

WESTERN *v.* HARRIS.
WESTERN *v.* MARKS.
GILBERT *v.* WOODLEY.

Vendor and Purchaser—Act of Bankruptcy by Vendor— Concealment of—Good Title—Bankruptcy Act, 1869, *ss.* 94, 95.

An inquiry had been directed by the Court of Appeal in the above actions 'whether on November 17, 1881, a good title could be made by the defendant Marks in accordance with a contract,' with certain consequential directions depending on whether a good title could or could not then be shown.

On the day named, which was the date of the conveyance of certain property by Marks to the plaintiff Western, there was a petition for liquidation or composition by Marks pending. Marks had filed the petition on July 19, 1881, and consequently until January 19, 1882, he was liable to be made a bankrupt, and had only a defeasible title to the property; but no adjudication in bankruptcy and no liquidation or composition proceedings had in fact resulted within the period of six months from the date of the filing of the petition.

The chief clerk found that at the date named Marks was unable to give a good title, and KAY, J., refused to vary the certificate.

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The defendant Harris appealed.

Horton Smith, Q.C., and *Hall* for the appellant, urged that nothing having happened to defeat the title, and the plaintiff having admittedly no notice of the act of bankruptcy of Marks, a good title had been given in the sense that by virtue of sections 94 and 95 of the Bankruptcy Act, 1869, he would have got a title available against all the world.

Millar, Q.C., and *W. B. Heath*, for the respondents, were not called upon.

Their LORDSHIPS dismissed the appeal, holding that by the inquiry directed was meant a title which on that day assumed the vendor to be acting honestly. They also held that a vendor or his solicitor concealing from an intending purchaser the fact that the vendor had committed an act of bankruptcy upon which he was still liable to be made a bankrupt would be guilty of gross dishonesty, in respect of which a criminal prosecution would lie, and the solicitor would render himself liable to be struck off the roll. They, however, declined to lay down whether a pending petition on which the vendor might be adjudicated bankrupt ought to be set out in the abstract of title. Sections 94 and 95 of the Bankruptcy Act, 1869, do not justify a disposition by a bankrupt of his property which is to defeat his creditors, and which could only be validated by the ignorance of the purchaser of the act of bankruptcy, or give him a right to make it, but only protect a person who has *bonâ fide* purchased from a bankrupt for valuable consideration. To such a disposition the maxim 'Fieri non debuit, factum valet' applies.

Solicitors: Hall-Hall for the appellant; Western & Sons and Lumley & Lumley for the respondents.

Court of Appeal.
COTTON, L.J.
BOWEN, L.J.
FRY, L.J.
Oct. 29.

In re BRACKEN.
DOUGHTY *v.* TOWNSON.

Liability of Executors—Distribution of Assets—Lord St. Leonard's Act (22 & 23 *Vict. c.* 35), *s.* 29—*Advertisements for Creditors and Claimants.*

Appeal by plaintiff from a decision of NORTH, J.

The case is noted *ante*, p. 47.

Seward Brice, Q.C., and *F. Hoare Colt* for the appellant.

Joseph Gatey, for the respondent, was not called upon.

Their LORDSHIPS dismissed the appeal, with costs. BOWEN, L.J., and FRY, L.J., expressed doubts whether it was a case where an appeal would lie, section 26 of the Act apparently leaving the question as to the proper mode of issuing advertisements to the discretion of the Court below.

Solicitors: Warriner & Kinch (agents for Mole & Stone, Derby) for the appellant; Tahourdins & Hargreaves (agents for Johnson & Tilley, Lancaster) for the respondent.

HIGH COURT OF JUSTICE.

Chancery Division.
NORTH, J.
Oct. 26.

In re THE BLUE RIBBON LIFE, ACCIDENT, MUTUAL, AND INDUSTRIAL ASSOCIATION COMPANY.

Insurance Company—Investment—East Indian Railway B Annuities—Life Assurance Companies Acts, 1870-72—*Board of Trade Rules*, 1872, *rule* 4—*Trust Investment Act*, 1889 (52 & 53 *Vict. c.* 32), *s.* 3 (*d*).

Petition.

This was a petition by the above company, under the Life Assurance Companies Acts, 1870-72, to obtain the sanction of the Court to a change of investment of the sum of 23,071*l.* India 3*l.* per Cent. Stock in Court to the credit of the company into East Indian Railway 'B' annuities.

Cozens-Hardy, Q.C., and *Wurtzburg*, for the petition, referred to the Board of Trade Rules, 1872, made under the Life Assurance Companies Acts, 1870-72 (rule 4), and to section 3 (*d*) of the Trust Investment Act, 1889.

NORTH, J., said it was not necessary to consider whether the proposed investment was within section 3 (*d*) of the Trust Investment Act, 1889, since he clearly had power to sanction the proposed investment under rule 4 of the Board of Trade Rules, 1872. He would, therefore, make an order sanctioning the change of investment, subject, however, to the production of an affidavit proving that the proposed investment would be more beneficial than a change into any of the securities distinctly authorised by the Court for the investment of trust funds.

Solicitors: Sharpe, Parker, Pritchard & Sharpe, for Coleman & Co., Birmingham.

Queen's Bench Division.
Oct. 24, 25.

IN THE MATTER OF AN ARBITRATION BETWEEN PYMAN & CO. AND DREYFUS & CO.

Shipping—Charterparty—Demurrage—Lay Days, Commencement of—Completion of Voyage.

Motion to set aside an award.

A charterparty provided that the steamship Lizzie English should proceed to Odessa or so near thereto as she could safely get, and there load a cargo of wheat, twelve running days (Sundays excepted) being allowed for loading and unloading, and ten days on demurrage. A dispute having arisen between the charterers and the shipowners as to the date when the lay days commenced, the matter was referred to an arbitrator, who found the following facts in his award: The Lizzie English reached Odessa outer harbour and as near as she could get to a loading berth on December 22, 1888, when the master gave notice to the charterers that she was ready to receive cargo. The charterers were ready to load the said ship as soon as she got alongside a loading berth at a quay in the inner harbour where the cargo was stored, but not before. There were no practicable means of loading the said ship at Odessa except

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at or alongside a quay berth either in the inner or outer harbour.

The harbour-master at Odessa refused to allow the said steamship to go to a loading-quay berth, either in the outer or the inner harbour, until her regular turn came after ships that had previously arrived. There was no custom at Odessa that steamships under charter were only considered ready to receive cargo when moored alongside the quays. The Lizzie English was ordered to a quay-loading berth in the inner harbour on January 5; loading commenced on the 10th, and was completed on the 15th.

The arbitrator further found that the lay days expired on January 5, and awarded that the shipowners were entitled to damages for demurrage and detention.

Barnes, Q.C., and *English Harrison* for the motion.

Cohen, Q.C., and *J. G. Witt* in support of the award.

The COURT (HUDDLESTON, B., and MATHEW, J.) held that the award was good, inasmuch as the lay days commenced to run from the time when the Lizzie English arrived as near as she could get to a loading-quay berth in the outer harbour at Odessa.

Solicitors: Lowless & Co. for the charterers; T. Cooper & Co. for the shipowners.

Queen's Bench Division. Oct. 26. } THE STEAMSHIP COUNTY OF LANCASTER *v.* SHARPE & Co.

Shipping—Demurrage—Liability of Consignees under Bill of Lading—Incorporation of Charterparty.

Appeal from the County Court of Liverpool.

The plaintiffs were owners of the steamship County of Lancaster, the cargo of which was deliverable under the bill of lading to the defendants, to whom the property did not pass, on their paying freight 'and all other conditions as per charterparty.' Demurrage was incurred at the port of loading. On arrival of the ship at the port of discharge the defendants repudiated all liability for demurrage, and the master delivered to them a part of the cargo consigned to them, retaining the rest under a claim for lien. It was known to the plaintiffs that the defendants were acting as agents for the charterers. The plaintiffs brought an action against the defendants on an implied contract to pay demurrage. The County Court judge nonsuited the plaintiffs, who appealed.

Joseph Walton for the plaintiffs.

Carver for the defendants.

The COURT (HUDDLESTON, B., MATHEW, J.) held that there was no implied contract on the part of the defendants to pay demurrage.

Appeal dismissed.

Solicitors: Norris, Allens & Chapman (for Quiggin, Liverpool), for the plaintiffs; Hill, Dickinson & Hill, Liverpool, for the defendants.

Queen's Bench Division. Oct. 28. } THORNTON *v.* THE SHEFFIELD BOROUGH JUSTICES.

Licensing Acts—Transfer of License—Neglect to Apply—Appeal to Quarter Sessions—Licensing Acts, 1828 *and* 1872 (9 *Geo. IV. c.* 61, *ss.* 4, 14, 27; 35 *&* 36 *Vict. c.* 94, *s.* 75, *sched.* 2).

Special case.

A tenant of a licensed house gave up the premises on September 29, having neglected to apply for a renewal of his license, the last day for doing which was September 26. The incoming tenant applied at the next special sessions on October 10 for a transfer of the license to him, and was refused. On appeal to quarter sessions the justices held that there was no appeal, inasmuch as this was not a case of renewal or transfer under sections 4 and 14 of the Licensing Act, 1828, the right to appeal under which is preserved by schedule 2 of the Licensing Act, 1872.

The appellant appealed to the Divisional Court.

R. S. Wright and *Asquith* for the appellant.

J. Paterson and *C. S. Hunter* for the respondents.

The COURT (HUDDLESTON, B., and MATHEW, J.) held that the case came within sections 4 and 14 of the Act of George IV., and, therefore, the right of appeal to quarter sessions remained.

Solicitors: Pitman & Sons (for Chambers & Son, Sheffield) for the appellant; Peacock and Goddard for the respondents.

Probate, Divorce, and Admiralty Division. Oct. 25. } SMITH *v.* SMITH.

Restitution of Conjugal Rights—Previous Demand for Cohabitation must be Conciliatory—Rule 175.

This was a wife's petition for restitution of conjugal rights.

The parties were married in June, 1866, and cohabited together until May, 1877, when they finally parted. In October, 1888—about eleven years afterwards—the wife determined to institute proceedings for restitution.

The demand for cohabitation and restitution of conjugal rights—required by rule 175 to be sent previous to the institution of such proceedings—was in the handwriting of the petitioner's solicitor, signed by the petitioner herself, and was in the following terms: 'I, Mary Elizabeth Smith, hereby give notice to you, Charles Frederick Smith, my husband, of my desire to cohabit and live with you; and I demand from you a full restitution of the conjugal rights which you have deprived me of; and I further notify to you that in the event of your not receiving me and providing a suitable home and habitation for me, it is my intention to apply to the High Court of Justice for the restitution of such my conjugal rights.' On the same day the respondent sent this reply: 'I am duly in receipt of yours of this date, and in reply beg to say that I decline to receive back my wife or to make a home for her.'

Searle for the petitioner.

BUTT, J., held that, although the Court of Appeal had

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decided, in the case of *Field* v. *Field*, 58 Law J. Rep. P. D. & A. 21; 14 L. R. Prob. Div. 26, that the demand for cohabitation and restitution required by rule 175 might be in the handwriting of the petitioner's solicitor, at the same time it was emphatically stated by Cotton, L.J., and Lindley, L.J., in giving judgment in that case, that the letter contemplated by rule 175 was a conciliatory letter, such as would be likely to lead to a reconciliation between husband and wife, and not a challenge or a mere formal solicitor's letter; and that the document in the present case was not of that character, and that therefore the petitioner had not satisfied the preliminary proceeding required by rule 175, and was therefore not entitled to a decree of restitution.

Decree refused accordingly.

Solicitor: St. John Wontner for the petitioner.

Probate, Divorce, and Admiralty Division. Oct. 29. } IN THE GOODS OF SAMUEL COVELL, DECEASED.

Probate—Revocation of Grant 'de bonis non,' Grantee having disappeared for some years.

Samuel Covell died September 1, 1875, having by his will, dated May 23, 1873, left the residue of his estate in trust for his grandchildren Irene, Alda, Frances, Maud, and Samuel Henry Smythe, children of his son Samuel Henry Covell. The said Samuel Henry Covell took out letters of administration to his father's estate, and subsequently made a will leaving all his property to his wife, who predeceased him. Subsequently he died intestate, leaving part of the personal estate of his father, Samuel Carter, unadministered.

On March 17, 1880, letters of administration *de bonis non* to the estate of Samuel Covell were granted to Samuel Henry Smythe Covell, who disappeared on December 9, 1884, leaving a letter for his sister Alda Covell, leading to the belief that he had either absconded or committed suicide. Since that time he had not been heard of.

Bargrave Deane now applied, on behalf of Irene Welsh (formerly Irene Covell), the eldest sister of Samuel Henry Smythe Covell, for letters of administration *de bonis non* to the estate of Samuel Covell. He cited *In the Goods of Bradshaw*, 57 Law J. Rep. P. D. & A. 12; 13 L. R. Prob. Div. 18.

BUTT, J., granted the application on the authority of the above case.

Solicitors: F. Venn & Co. for the applicant.

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Court of Appeal.
LORD ESHER, M.R.
LINDLEY, L.J.
LOPES, L.J.
Oct. 31.

PHILLIPPS AND ANOTHER *v.* REES.

Landlord and Tenant—Distress—Cost of Levy—Percentage—Bailiff—'Person making any Distress'—Agricultural Holdings Act, 1883 (46 & 47 *Vict. c.* 61), *s.* 49, *and schedule* 2.

Appeal from the Queen's Bench Division on a special case.

The question raised was whether on making a distress for rent the landlord or the bailiff was entitled to the percentage of 2½ per cent. mentioned in schedule 2 to the Agricultural Holdings Act, 1883. Section 49 of that Act, which provided that no person whatsoever making a distress should be entitled to any costs or charges except those set forth in schedule 2 to the Act, was repealed by section 9 of the Law of Distress Amendment Act, 1888 (51 & 52 Vict. c. 21), which gave the Lord Chancellor power to make rules for regulating the charges and expenses incidental to distress, but it was admitted that the Act of 1888 did not apply, because the action was commenced before it came into operation.

The Queen's Bench Division (MATHEW, J., and GRANTHAM, J.), on the authority of *Coode* v. *Johns*, 55 Law J. Rep. Q. B. 475; L. R. 17 Q. B. Div. 714, gave judgment for the plaintiffs.

Bowen Rowlands, Q.C., and *J. A. Foote* for the defendant.

F. C. Gore for the plaintiffs.

Their LORDSHIPS allowed the appeal, being of opinion that *Coode* v. *Johns* was wrongly decided; that the relation between a landlord and a bailiff employed to make the levy was that of principal and agent; that there was an implied contract that the bailiff should receive a reasonable sum for his services, which sum was generally realised from the tenants' goods as part of the expenses and was retained by the bailiff; and that as the Act of 1883, which was passed to protect tenants from extortion and to regulate the charges, did not interfere with the contract between the landlord and the bailiff, the latter was entitled to retain the percentage mentioned in the schedule.

Solicitors: Peacock & Goddard, for plaintiffs; Prior, Church & Adams, for defendant.

Court of Appeal.
COTTON, L.J.
BOWEN, L.J.
FRY, L.J.
Nov. 1.

Re ROYLE. ROYLE *v.* HAYES.

Practice—Originating Summons—Jurisdiction—Question as to Validity of Gift made by Testator in his Lifetime—Rules of Supreme Court, 1883, *Order LV., rule* 3.

Their LORDSHIPS have no jurisdiction under Order LV., rule 3, to determine on an originating summons questions which could not have been determined under a judgment for administration of an estate or the execution of a trust. Consequently there is no jurisdiction on an originating summons to determine the question of the validity of a gift of money made by a testator to his wife in his lifetime, the money being in her possession at the time of his death.

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Levett for the appellant.
E. S. Ford for the respondent.
Decision of KEKEWICH, J., *reversed.*

Solicitors: Bower, Cotton & Bower (agents for W. H. Vaughan, Cheadle) for the appellant; Yeilding, Barlow & Piper (agents for Cobbett, Wheeler & Cobbett, Manchester) for the respondent.

HIGH COURT OF JUSTICE.

Crown Cases Reserved. Nov. 2. } REGINA *v.* BECK.

Fraudulent Bankruptcy—Destruction of Documents previous to Presentation of Petition—Presentation of Petition by Debtor—Debtors Act, 1869 (32 *&* 33 *Vict. c.* 62), *s.* 11, *subs.* 9—*Bankruptcy Act,* 1883 (46 *&* 47 *Vict. c.* 52), *s.* 163.

Case reserved by HAWKINS, J.

The prisoner was indicted under section 11, subsection 9 of the Debtors Act, 1869, upon an indictment charging that on March 1, 1889, he presented a bankruptcy petition, upon which he was afterwards adjudged bankrupt, and that within four months next before such presentation he did, with intent to conceal the state of his affairs, &c., unlawfully conceal, destroy, or mutilate certain documents relating to his property or affairs.

For the prisoner it was submitted that the indictment disclosed no offence, because it showed that the prisoner was adjudged bankrupt on his own petition.

Marshall and *Hammond Chambers* for the prisoner.

The Solicitor-General (*Sir E. Clarke, Q.C.*), *R. S. Wright,* and *Trevor White,* for the prosecution, were not called upon.

The COURT (LORD COLERIDGE, C.J., POLLOCK, B., FIELD, J., MANISTY, J., CAVE, J., DAY, J., and GRANTHAM, J.), held that the indictment was good by reason of section 163 of the Bankruptcy Act, 1883, which provides that section 11 of the Debtors Act, 1869, shall have effect as if there were substituted therein for the words 'if after the presentation of a bankruptcy petition against him,' the words 'if after the presentation of a bankruptcy petition by or against him.'

Conviction affirmed.

Solicitors: The Solicitor to the Treasury for the prosecution; F. Marshall for the prisoner.

Chancery Division. CHITTY, J. Oct. 30. } THE NEATH PERMANENT BENEFIT BUILDING SOCIETY *v.* LUCE.

Building Society—Extent of Borrowing Power—'Amount Secured by Mortgage'—Building Societies Act, 1874 (37 *&* 38 *Vict. c.* 42), *s.* 15 (2).

The Building Societies Act, 1874, s. 15, subs. 2, provides that a permanent building society may receive on loan an amount not exceeding two-thirds of the 'amount for the time being secured to the society by mortgages from its members.'

In the winding up of the above society the liquidator disputed the validity of certain loans to the society as in excess of the amount allowed by this section, and the question was directed to be argued, prior to the taking of the accounts, upon what principle it was to be ascertained what was the amount secured to the society by mortgages from its members within the meaning of the section.

Sir H. Davey, Q.C., and *J. G. Wood,* for the liquidator, contended that this meant only the principal sum borrowed by the member on his mortgage, and did not include fines, nor arrears of interest, nor prospective interest.

Romer, Q.C., and *Levett*; and *Byrne, Q.C.,* and *Chadwyck Healey,* for the lenders, *contrà.*

CHITTY, J., held that the amount was not to be limited merely by the amount of principal secured, but covered all sums due on the members' securities at the time of the loans to the society, whether for principal or interest, or fines, or otherwise, and all instalments not then accrued due, but secured by the mortgage and outstanding.

Solicitors: Howell Thomas (for S. T. Evans, Neath); Prior, Church & Adams (for Meade, King & Bigg, Bristol); R. White (for Hartland & Isaac, Swansea).

Chancery Division. CHITTY, J. Nov. 1. } ALEXANDER *v.* SIMPSON AND OTHERS.

Company—Extraordinary General Meeting—Notice to Shareholders—Companies Act, 1862, *s.* 51.

On July 3, 1889, a company sent out to its shareholders notice of an extraordinary general meeting to be held on July 12, at the time and place therein mentioned, for the purpose of passing resolutions for the voluntary liquidation and reconstruction of the company, and such notice concluded by stating that 'should such resolutions be duly passed, the same will be submitted for confirmation as special resolutions to a subsequent extraordinary general meeting of the company, which will be held on July 29, 1889, at the same time and place.' The meeting of July 12 having been held, and the resolutions passed, the company sent to each shareholder by post a copy of a financial newspaper containing a report of the meeting, placing against such report a marginal note to attract the attention of the reader, but did not give any other or further notice to the shareholders. A meeting was held on July 29, and confirmatory resolutions passed, and the company proceeded to act thereon.

A motion was now made by a shareholder for an *interim* injunction, restraining the directors and liquidator from proceeding with the liquidation.

Romer, Q.C., and *Bramwell Davis* for the applicant.

Rigby, Q.C., Seward Brice, Q.C., and *J. T. Prior* for the respondents.

CHITTY, J., held that the notice as to the meeting of the 29th was conditional, and, therefore, defective, and that the defect in that respect was not remedied by the sending of the newspaper. The applicant was entitled to an order.

Chancery Division. NORTH, J. Oct. 25. } *In re* HARRISON. TOWNSON *v.* HARRISON.

Will—Construction—Devise of Lands 'situate at G.' —Lands adjoining but outside of Parish of G.

I. Harrison, by his will, devised upon certain trusts all the lands 'situate at Gaddesby, in the county of Leicester, of or to which I shall be entitled at the time of my death.' When this will was made the testator had a farmhouse and a piece of land in Gaddesby parish, but before his death he had acquired in addition eight

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other pieces of land, of which only one was in Gaddesby parish, and the other seven were outside it, but all formed one continuous property.

The question was now raised by the trustee and executor of the will, on originating summons, whether the whole of this property passed by the devise of the testator's lands 'situate at Gaddesby,' or whether the part of the property outside the parish was excluded.

Cozens-Hardy, Q.C., and *Swinfen Eady; Everitt, Q.C.*, and *Ingle Joyce; Higgins, Q.C.*, and *Woodroffe;* and *Swan* for the parties.

NORTH, J., held that the whole property passed under the devise.

Solicitors: Kingsford, Dorman & Co.; Robinson, Preston & Stow.

Chancery Division. NORTH, J. Oct. 28. } *Re* JONES. DUTTON *v.* BROOKFIELD.

Will—Construction—Direction that Trustees of Will may make 'any Sales and Arrangements' they should think fit—Power of Trustees to Mortgage Real Estate.

Adjourned summons.

A testator, on appointing three persons executors and trustees of his will, directed 'that the trustees or trustee for the time being of my will shall have full power to settle any accounts and wind up my affairs as they or he shall think best, and in so doing to make any sales and arrangements they or he shall judge expedient.' The will did not contain any charge of debts. Two of the executors and trustees renounced probate and disclaimed the trusts.

The question was raised on this summons whether the trustee had power to mortgage the testator's real estate for the purposes of administration.

Cozens-Hardy, Q.C., and *Russell Roberts* for the plaintiff.

Napier-Higgins, Q.C., and *P. S. Stokes* for the defendant.

NORTH, J., held that the trustee had power to mortgage the testator's real estate.

Solicitors: Kennedy, Hughes & Kennedy for the plaintiff; Chester, Mayhew & Co., for the defendant.

Chancery Division. STIRLING, J. Oct. 31. } FISHER *v.* SHIRLEY.

Marriage Settlement—Covenant by Husband to Settle his Wife's after-acquired Property—Death of Wife in Lifetime of Husband—Implied Restriction to Property acquired during Coverture.

By a settlement dated in 1841, and made in contemplation of the marriage of Mr. and Mrs. S., it was agreed and declared, and the intended husband covenanted with the trustees of the settlement, that if the intended wife, or the intended husband in her right, should become entitled to any moneys, stocks, funds, or other property whatsoever, the same should, at the costs and charges of the said fund, by all such acts, deeds, and assurances as should be necessary for the purpose, be vested in the trustees, to be held by them upon the trusts of the settlement. At the date of this settlement the intended wife was a minor, and was entitled to a contingent reversionary interest in a sum of 3,866*l.*, which became vested upon her marriage, but she died before her interest fell into possession, leaving her husband her surviving. When the fund became divisible it was claimed by the husband and an assignee from him on the one hand, and by the trustees of the marriage settlement on the other. Accordingly a summons was taken out by the trustees of the fund to determine the question whether it was bound by the husband's covenant.

Aubrey Spencer for the summons.

J. B. Dyne, for the husband and his assignee, submitted, upon the authorities, that the covenant only extended to property acquired during the coverture, and that the wife's interest in the fund was not bound by the covenant.

Hadley, for the trustees of the settlement, contended that the cases only decided that property acquired by the wife after the death of the husband was not bound by a covenant to settle after-acquired property, the object of such a covenant being to exclude the marital right, and that the limitation did not apply to property acquired by the husband after the death of the wife.

STIRLING, J., held that the property was bound by the covenant. The reasoning of the cases in which the covenant had been limited to property acquired during coverture did not apply to the case of property coming to the husband in right of the wife after her death. Therefore, there being no ground for restricting the covenant in the present case, it ought to be construed according to its literal meaning.

Solicitors: Janson, Cobb, Pearson, M'Kee & Shard, agents for Tozer, Geare & Mathew, Exeter, for plaintiffs; Prior, Church & Adams, for husband; Cole & Jackson, agents for Francis & Francis, Cambridge, for trustees of marriage settlement.

Chancery Division. KEKEWICH, J. Nov. 4. } WORMAN *v.* WORMAN.

Trust Investment—Breach of Trust—Purchase of Land—Equity of Redemption—Previous Proceedings by other Beneficiary—Compromise—'Res judicata'—Estoppel.

Trust funds were held upon trust for investment in the purchase of freehold or leasehold lands in England or Wales, among other authorised investments. The trustees having invested part of the funds in the purchase of equities of redemption in freeholds, in 1873 the beneficial owner of one share under the trusts instituted an action of *Loughton* v. *Worman*, whereby the plaintiff sought to charge the trustees on the footing of wilful default in having made the investment in question. The plaintiffs in the present action, who were then infants, were served with notice of judgment (directing accounts and inquiries as to the nature of the investments), and attended the proceedings in *Loughton* v. *Worman*. In July, 1881, those proceedings were compromised and stayed upon the terms of a certain sum being paid to the plaintiff, and the compromise was sanctioned by the Court on behalf of the infants.

By the present action the plaintiffs claimed to make the trustees liable for the loss sustained by the investment in question.

For the defence it was argued that the investment was authorised by the terms of the trust, and that the matter was *res judicata*, or otherwise that the plaintiffs were estopped by the compromise sanctioned in 1881.

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Warmington, Q.C., and *Theobald* for the plaintiffs.
S. Hall, Q.C., and *Pauli* for the defendants.

KEKEWICH, J., held that the investment was not a purchase of freehold, and that there was no defence on the ground of *res judicata* or estoppel.

Solicitors: Crosse & Sons for the plaintiffs; Lee & Pembertons for the defendants.

Queen's Bench Division. Oct. 29. } BAZETT *v.* MORGAN.

Costs—Costs 'left to the Discretion of the Court'—Right of Appeal—County Courts Act, 1888 (51 & 52 *Vict. c.* 43), *s.* 116—*Judicature Act*, 1873, *s.* 49.

Appeal from chambers.

The action was brought by the plaintiff to recover a sum of 49*l.* 10*s.* for board and tuition of the defendant's son. Upon a summons under Order XIV., rule 1, the plaintiff obtained an order to sign final judgment for 23*l.* 15*s.*, and liberty was given to the defendant to defend as to the residue of the claim. An order was afterwards made by consent that the plaintiff should abandon his claim to the balance, except as to 4*l.* 10*s.*, and that the defendant should pay that sum to the plaintiff with costs to be taxed.

WILLS, J., subsequently made an order that the plaintiff should be allowed the costs of the action upon the scale in use in the Supreme Court.

The defendant appealed.

Reed for the defendant.

Morton Smith for the plaintiff.

The COURT (FIELD, J., and MANISTY, J.) held that the language of section 116 of the County Courts Act, 1888, showed that the order of Wills, J., was an order as to costs 'which by law are left to the discretion of the Court' within the meaning of section 49 of the Judicature Act, 1873, and that it was, therefore, not subject to appeal.

Appeal dismissed.

Solicitors: Pitman & Sons (for A. Campbell Bazett, Newbury) for the plaintiff; T. Durant for the defendant.

Queen's Bench Division. Oct. 31. { IN THE MATTER OF AN ARBITRATION BETWEEN THE LONDON, TILBURY, AND SOUTHEND RAILWAY COMPANY AND THE TRUSTEES OF THE GOWER'S WALK SCHOOLS.

Lands Clauses Consolidation Act, 1845 (8 & 9 *Vict. c.* 18), *s.* 68—*Railway Clauses Act*, 1845 (8 & 9 *Vict. c.* 20), *ss.* 6, 16—'*Injuriously affecting*' *Ancient Lights—Alteration of Building—Obstruction to New Windows.*

Special case stated by an arbitrator.

A railway company erected a warehouse under the powers of their special Act, which incorporated the Railway Clauses Act, 1845, and in so doing obstructed the passage of light to the windows of certain schools. These schools, which had been recently built, occupied the site of an ancient building, and parts of the windows of the new buildings corresponded with parts of old windows which had acquired the right to free access of light under the Prescription Act (2 & 3 Wm. IV. c. 71), s. 3. The question for the opinion of the Court was whether the claimants, trustees of the schools, were entitled to damages for the obstruction of light to all the windows darkened by the erection of the warehouse, or whether they were entitled only to damages for obstruction of light to such parts of the new windows as corresponded with the ancient openings.

Bosanquet, Q.C., and *Houghton* for the claimants.

R. S. Wright and *C. Haigh* for the railway company.

The COURT (MATHEW, J., and WILLS, J.) held that, as the railway company had injuriously affected the ancient lights of the claimants, the latter were entitled, on the principle of the case of *Buccleugh* v. *The Metropolitan Board of Works*, 41 Law J. Rep. Exch. 137; L. R. 5 H. L. 418, to compensation, also for damage sustained by them by reason of the obstruction to the new windows.

Solicitors: Mathews & Browne for the claimants; Hanbury, Hutton & Whitting for the railway company.

Queen's Bench Division. Nov. 5. } GREENHAM *v.* CHILD (THORNTON, CLAIMANT).

Bill of Sale—Affidavit—Residence of Grantor—Sufficiency of Description—41 & 42 *Vict. c.* 31, *s.* 10 (2).

A bill of sale described the grantor as 'Alfred John Child, of 20 Avington Grove and 72 Beckenham Grove, both in the hamlet of Penge, and of 100 High Street, Croydon, all in the county of Surrey.' In the affidavit for registration the grantor was described as residing at '20 Avington Grove, in the hamlet of Penge, in the county of Surrey.' The grantor did, as a fact, reside at that address, and carried on his chief business there, the other places being branch establishments. The grantor claimed the goods comprised in the bill of sale as against an execution creditor of the grantor, and it was objected on the part of the execution creditor that the bill of sale was invalid, on the ground that the affidavit for registration insufficiently described the residence of the grantor. In an interpleader issue the County Court judge pronounced for the validity of the bill of sale. The execution creditor appealed.

C. C. Scott for the execution creditor.

R. M. Bray for the claimant.

The COURT (MATHEW, J., and WILLS, J.) held that the bill of sale was good, as the residence of the grantor was sufficiently stated in the affidavit for registration.

Solicitors: P. S. Vanderpump for the execution creditor; W. J. Child & Son for the claimant.

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COURT OF APPEAL.

Court of Appeal.
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HOLTBY *v.* HODGSON; BATESON, GARNISHEE.

Married Woman—Practice—Garnishee Order—Judgments for and against Married Woman—Entry of Judgment—Order XLV., rule 1*—Order XLI., rule* 3.

Appeal of the judgment debtor from the decision of a Divisional Court affirming garnishee order absolute to the judgment creditor.

In September, 1887, judgment was obtained by the judgment creditor, Holtby, against the judgment debtor, Juliet Hodgson, a married woman. The judgment followed the form settled in *Scott* v. *Morley*, 57 Law J. Rep. Q. B. 43, p. 45; L. R. 20 Q. B. Div. 120—viz. 'It is adjudged that the plaintiff do recover £ and costs (to be taxed) against the defendant, Juliet Hodgson, such sum and costs to be payable out of her separate property as hereinafter mentioned and not otherwise, and it is ordered that execution hereon be limited to the separate property of the defendant, Juliet Hodgson, not subject to any restriction against anticipation, unless, by reason of section 19 of the Married Women's Property Act, 1882, the property shall be liable to execution notwithstanding such restriction.' On July 23, 1889, the judgment debtor obtained a verdict against Bateson for 150*l.* for malicious prosecution, and judgment was thereupon pronounced by the judge who tried the case in Court, but judgment was not entered until October, 1889. The garnishee proceedings were commenced on July 24, 1889.

Upon appeal from the master's order making absolute the garnishee order, WILLS, J., at chambers, referred the matter to the Divisional Court. The Divisional Court (MATHEW, J., and CAVE, J.) affirmed the master's order.

The judgment debtor appealed.

Crump, Q.C. (*Cyril Dodd* with him), for the judgment debtor, contended (1) that the judgment obtained against the judgment debtor was not a judgment in respect of which garnishee proceedings might be taken within Order XLV., rule 1, because it was not a personal judgment against the judgment debtor, but against her separate estate only; (2) that the judgment debtor had not obtained such a judgment against Bateson as made Bateson indebted to her within Order XLV., rule 1, for the judgment only made the debt part of her separate estate; and (3) that there was no debt due to the judgment debtor from Bateson on July 24, when the garnishee proceedings were commenced, because her claim was for unliquidated damages, and judgment was not entered until the following October.

T. Willes Chitty, for the judgment creditor, was not called upon to argue.

Their LORDSHIPS affirmed the decision of the Divisional Court, and were of opinion that a judgment obtained against a married woman according to the form in *Scott* v. *Morley*, *supra*, is within Order XLV., rule 1; also that a judgment obtained by a married woman constitutes the person against whom it is

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obtained a person indebted to her within the rule, and that the judgment obtained by the judgment debtor against Bateson, when entered, took effect as of the day when it was pronounced: Order XLI., rule 3.

Appeal dismissed.

Solicitors: Emmet, Son & Stubbs for judgment creditor; Clinton & Buckley for judgment debtor.

Court of Appeal.
COTTON, L.J.
BOWEN, L.J.
FRY, L.J.
Oct. 30.
Nov. 12.

In re FRISBY.
ALLISON *v.* FRISBY.

Principal and Surety—Mortgage—Joint and several Covenant by Mortgagor and Surety—Payment by Mortgagor—Statute of Limitations, 1874, *s.* 8—*Co-contractor—Mercantile Law Amendment Act*, 1856, *s.* 14.

Appeal by defendant from decision of KAY, J.

The case is noted *ante*, p. 76.

Marten, Q.C., and *Percival* for the appellant.

Renshaw, Q.C., and *Townsend* for the plaintiff.

Their LORDSHIPS dismissed the appeal.

Solicitors: Clarke, Rawlins & Co. (for Percival & Son, Peterborough); Beaumont, Son & Rigden (for Maurice Brown, Peterborough).

Court of Appeal.
LORD COLERIDGE, C.J.
COTTON, L.J.
FRY, L.J.
Nov. 11, 12, 13.

In re DAVID. BUCKLEY *v.* THE ROYAL NATIONAL LIFEBOAT INSTITUTION.

Mortmain—Interest in Land—9 Geo. II. c. 31—*Bonds of Harbour Trustees—Assignment of 'Rates, Tolls, Rents,' &c.—Bridge Tolls.*

Appeal from decision of NORTH, J., reported 58 Law J. Rep. Chanc. 542; L. R. 41 Chanc. Div. 168.

Vaughan Hawkins and *Dibdin* for appellants.

Everett, Q.C., and *Cruickshank*, for respondents, were not called upon.

Their LORDSHIPS dismissed the appeal, with costs.

Solicitors: Clayton, Sons & Fargus for appellants; Murray, Hutchins & Stirling for respondents.

HIGH COURT OF JUSTICE.

Chancery Division.
NORTH, J.
Oct. 30.

CHRISTIE *v.* THE NORTHERN COUNTIES PERMANENT BENEFIT BUILDING SOCIETY.

Building Society—Arbitration Clause—Appointment of Arbitrators after Action Commenced.

Adjourned summons.

By one of the rules of the above society it was provided that a member who had given notice to withdraw his shares should continue to be a member of the society and to be bound by the rules until he should have received the amount payable in respect of his shares. By another rule it was provided that every dispute between the society and any member in which the decision of the board should not be deemed satisfactory should be settled by a reference to arbitration, pursuant to the Building Societies Act, 1874. This rule continued as follows: 'Five arbitrators shall be elected by the members at a general meeting. In each case of dispute the names of the arbitrators shall be written on pieces of paper and placed in a box, and the three whose names are first drawn out by the complaining party shall be the arbitrators to decide the matter in dispute.' The plaintiff, who was a member of the society, had given notice to withdraw his shares, and a dispute arose between him and the society as to the amount which he was entitled to recover on withdrawal. The plaintiff accordingly brought this action to enforce his claim. At the time of the commencement of the action no arbitrators had been elected under the rules. After the service of the writ the society appointed five persons to act as arbitrators, and then took out this summons, asking that the action and all matters in dispute between the plaintiff might be referred to arbitration.

Sir Horace Davey, Q.C., Everitt, Q.C., and *Farwell* for the society.

Napier-Higgins, Q.C., and *Rutherford* for the plaintiff.

NORTH, J., held that the society were not entitled to insist on a reference to a tribunal elected by them after the litigation had commenced.

Solicitors: Norris, Allens & Chapman for the society; Rowcliffes, Rawle & Co. for the plaintiff.

Chancery Division.
STIRLING, J.
Nov. 5.

In re BIRD AND THE ARTIZANS, &C. ACT, 1875, AND LANDS CLAUSES ACT.

Lands Clauses Act—Compulsory taking of Land—Order for Payment of Costs—Interest on Costs—Application for Leave to issue Execution—Lands Clauses Act, 1845, *s.* 80—*Order XLII. r.* 23.

In this case land had been taken by the Metropolitan Board of Works under the powers of the Artizans and Labourers Dwellings Improvement Act, 1875, and more than six years ago an order had been made under section 80 of the Lands Clauses Consolidation Act, 1845, for the payment of the costs of the taking of the land.

This was an adjourned summons under Order XLII., rule 23, for leave to issue execution to enforce the order against the London County Council.

W. H. Gover for the applicants.

Beale, Q.C., and *Geare*, for the respondents, contended that the applicants were not entitled to interest from the date of the order, but only from the date of the taxing-master's certificate. It was pointed out that some of the costs were incurred after the date of the order, and that that might frequently be the case with orders made under section 80.

Eventually, upon the applicants withdrawing their claim to interest prior to the date of the certificate, his LORDSHIP gave leave to issue execution for the costs, with interest from the date of the certificate, and made no order as to the costs of the present application, observing that, if orders under section 80 carried interest on costs, the form of such orders might require reconsideration.

Solicitors: Henry Gover & Son for applicants; R. Ward for the London County Council.

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Queen's Bench Division. Nov. 4. } CHAMBERLAIN *v.* STONEHAM.

Costs—Solicitor attending Bankruptcy Court as Witness—County Court Rules, 1889—Allowances to Witnesses.

Appeal from Shoreditch County Court.

The plaintiff, a solicitor, was served with a summons by the official receiver to attend the Barnet County Court sitting in bankruptcy to give evidence as to certain property of a bankrupt. The plaintiff duly attended, but objected to be sworn until a reasonable sum was paid him for expenses as a professional witness, basing his claim on section 27 of the Bankruptcy Act, 1883, and the scale annexed to the County Court Rules, 1889.

The registrar decided that 3*s.* 6*d.* was a reasonable sum for the plaintiff's travelling expenses, and refused to allow him any further sum.

The plaintiff was thereupon sworn and gave his evidence, and subsequently brought an action in the Shoreditch County Court against the defendant, the official receiver, claiming the sums of 1*l.* for loss of time and 10*s.* 6*d.* for maintenance.

The County Court judge gave judgment for the defendant, but gave leave to appeal.

The plaintiff appealed, but abandoned his claim for maintenance.

R. S. Wright for the plaintiff.

Mattinson for the defendant.

The COURT (HUDDLESTON, B., and STEPHEN, J.) held that the decision of the County Court judge was wrong, and that the case must be remitted to him to determine the sum to which the plaintiff was entitled under the County Court Rules, 1889, 'Allowances to Witnesses.'

Order for new trial.

Solicitors: V. J. Chamberlain for the plaintiff; Ernest Todd for the defendant.

Queen's Bench Division. Nov. 8. } LEAKE AND ANOTHER *v.* DUFFIELD.

Husband and Wife—Married Woman—Separate Estate—Restraint upon Anticipation—Contract—Property bound by Contract—Proof of Existence of such Property—Onus—45 & 46 Vict. c. 75, s. 1, subs. 3.

The defendant had on her marriage a sum of money settled on her, with a restraint upon anticipation. In 1884 she arranged with her husband to buy out of her separate income the clothes for herself and all her children, except one. Between 1884 and May, 1886, she purchased goods of the plaintiffs, who were drapers, to the amount of 21*l.* 19*s.* 10*d.* The plaintiffs sued her in the County Court at York, and it was proved at the trial that the only free separate property the defendant possessed at the time of the contract was the wearing apparel of herself and her children. The County Court judge gave judgment for the plaintiffs for the amount claimed, on the ground that, as at the time of making the contract the defendant had some free separate property, the contract was valid.

The defendant appealed.

Scott Fox for the plaintiffs.

J. V. Austin for the defendant.

The COURT (MATHEW, J., and WILLS, J.) held that the County Court judge was wrong, and that on the cases and the proper construction of subsection 3 of section 1 of 45 & 46 Vict. c. 75, where a married woman is restrained from anticipating, the presumption is that she did not intend to enter into a binding contract, and the contrary intention must be shown; that the onus lies on the creditor to prove that she had free separate estate which she must reasonably be deemed to have bound in respect of such contract, and which could be made liable to satisfy it; and that it is not sufficient to show that the defendant possesses, as her separate property, articles of wearing apparel.

Solicitors: Ridsdale & Son, for G. Crumbie (York), for the plaintiffs; Crowder, Anstie & Vigard for the defendant.

Queen's Bench Division. Nov. 11. } NICHOLSON *v.* YEOMAN.

Parliament—Registration—Occupation by Virtue of Service—Occupation as Tenant—Tenancies in Immediate Succession—30 & 31 Vict. c. 102, s. 26; 48 Vict. c. 3, s. 3.

Case reserved by the revising barrister for the North-West Riding of Yorkshire.

In this case the claimant had occupied in the same Parliamentary division a set of premises by virtue of his service for a period of seven months, and another set of premises for five months as an ordinary inhabitant occupier, making in all twelve calendar months previous to the last day in July, 1889.

The revising barrister disallowed the claim, on the ground that occupation in immediate succession did not apply to occupation under the service franchise.

Germaine for the claimant.

Meek for the respondent.

The COURT (LORD COLERIDGE, C.J., MATHEW, J., and WILLS, J.) held that the appeal ought to be allowed, as the claimant was an inhabitant occupier, and in that case the nature of the occupation was immaterial, as by section 3 of 48 Vict. c. 3, he is deemed to be the inhabitant occupier of a dwelling-house as tenant.

Solicitors: H. A. Chatterton for the claimant; Lane & Co. (for W. C. Trevor, Guisborough) for the respondent.

Queen's Bench Division. Nov. 11. } GIFFORD *v.* THE OVERSEERS OF ST. LUKE'S, CHELSEA, AND PANWELL.

Parliament—Registration—Objection to Voter—Notice—Place of Abode as stated in List—6 & 7 Vict. c. 18, s. 17.

Case reserved by the revising barrister for the borough of Chelsea.

A voter was objected to on the ground that he had not occupied his premises for the qualifying period of twelve months. The notice of objection was left at 19 Denyer Street, at which house the voter had not resided for two years. There was no evidence that the notice of objection had ever reached the voter. The revising barrister disallowed the objection on the

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ground of insufficiency of the service of the notice. The objector appealed.

It was contended on behalf of the appellant that the service of the notice of objection at 19 Denyer Street was sufficient under section 17 of 6 & 7 Vict. c. 18, as that was the place of abode of the voter as stated in the list, and that under the section all that was required was to 'give or cause to be left at the place of abode of the person objected to as stated in the list' a proper notice.

Costelloe for the appellant.

C. M. Chapman for the respondents.

The COURT (LORD COLERIDGE, C.J., MATHEW, J., and WILLS, J.) held that the revising barrister was right, and that the appeal ought to be dismissed, for where an objector did not rely on personal service or service through the post, but left the notice at the voter's abode, as stated in the list, he must take care that the notice reached the voter.

Solicitors: Tatham & Procter for the appellant; T. J. Robinson for the respondents.

Queen's Bench Division. Nov. 11. } WHITWELL *v.* THE CLERK OF THE PEACE FOR THE NORTH RIDING OF YORKSHIRE.

Parliament—Registration — Claim as Old Lodger—Claim made out in Time—Claim not Forwarded to Overseers by Appointed Day—Claim Omitted from List—Jurisdiction of Revising Barrister—41 & 42 *Vict. c.* 26, *s.* 22—48 *Vict. c.* 15, *s.* 18.

Case reserved by the revising barrister for the North-West Riding of Yorkshire.

The claimant in this case was on the lodger list for 1888, and on July 25, 1889, he filled up a form of claim properly as an old lodger, addressed it to the overseers, and sent it to a registration agent for the purpose of its being sent on to the overseers. It was received by the agent on the 26th, and he, thinking it too late, did not send it on, and the overseers omitted the name from their list of old lodger claims.

The claimant appeared in person before the revising barrister while holding his Court, and claimed to be put on the list. His claim was objected to, but the objection was overruled, and the claim was allowed.

The objector appealed.

Roskill for the objector.

Meek for the claimant.

The COURT (LORD COLERIDGE, C.J., MATHEW, J., and WILLS, J.) held that the appeal ought to be allowed, and the serving of the notice of claim on the overseers by an appointed day was a matter of substance and not of form; and that, as the claimant had not served notice on the overseers by such appointed day, he was disentitled to be put on the list, and that the revising barrister had no jurisdiction to allow the claim under 48 Vict. c. 15, s. 18.

Solicitors: Moore & Semper (agents for Jackson & Jackson, Middlesbrough) for the appellant; Lane & Co. (agents for H. C. Trevor, Guisborough) for the respondent.

Queen's Bench Division. Nov. 11. } AINSLIE *v.* NICHOLSON.

Parliament — Registration — Borough Vote—Lodger—Declaration—Joint or Sole Tenant—Non-erasure of Alternative Qualification—41 & 42 *Vict. c.* 26, *s.* 25.

Case reserved by the revising barrister for the Hornsey Division.

Certain lodgers claiming to be put upon the lodger-list of voters omitted, when claiming as 'sole tenant,' to erase the words 'or as joint tenant with ——,' others when claiming as 'joint tenant with' another person omitted to erase the words 'as sole tenant;' others inserted the name of the landlord but erased it, leaving the alternative words remaining. The claims were not opposed, but the revising barrister disallowed them as leaving the nature of the tenancies uncertain, whether sole or joint, and if joint, with whom the claimants held, and considered he could not amend them, but that if he had had the power he would have amended them.

Macmorran for the claimants.

No one appeared on the other side.

The COURT (LORD COLERIDGE, C.J., MATHEW, L.J., and WILLS, L.J.) held that the revising barrister had the power to amend, the declaration being part of the claim, and that, as he would have amended if he had thought he had the power, he ought to so amend them.

Solicitors: Jennings & Forbes for the claimants.

Queen's Bench Division. Nov. 12. } KING *v.* THE CHARING CROSS BANK.

Practice — Prohibition — County Court — Summons at Chambers—Motion on Notice—County Courts Act, 1888 (51 & 52 *Vict. c.* 43), *s.* 127—*Rules of the Supreme Court*, 1883, *Order LIX., Rule* 8*a*—*Rule* 13 *of the Rules of the Supreme Court, December*, 1888.

Application at chambers for prohibition to a County Court judge, referred to the Court by WILLS, J.

R. V. Williams, Q.C., for the plaintiff, took the preliminary objection that by Order LIX., rule 8*a*, every application for a prohibition to a County Court must now be brought by notice of motion to the parties to the proceedings in the County Court, and that the application being made at chambers and referred to the Court was wrongly conceived, and must fail.

Cluer, for the defendant, argued that the power given by section 127 of the County Courts Act, 1888 (51 & 52 Vict. c. 43), to any judge of the High Court, as well during the sittings as in vacation, to hear and determine applications for writs of prohibition, could not be overruled by Order LIX., rule 8*a*, the object of which was merely to abolish the practice of moving for an order *nisi*.

The COURT (MATHEW, J., and WILLS, J.) held that the application for a prohibition may still be made in chambers, and that the true meaning of Order LIX., rule 8*a*, is that the application, if made in Court, must now be made by notice of motion, instead of, as formerly, by motion for an order *nisi*.

Solicitors: W. T. Boydell for the plaintiff; C. E. R. Preston for the defendants.

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COURT OF APPEAL.

HIGH COURT OF JUSTICE.

COURT OF APPEAL.

Court of Appeal.
COTTON, L.J.
FRY, L.J.
Nov. 7, 10.
} LISTER *v.* LISTER.

Maintenance—'Dum sola' Clause.

Appeal from a decision of BUTT, J., confirming the report of the registrar, with the omission of the words limiting the allowance to the appellant's former wife 'as long as she should remain unmarried.' The case is noted *ante*, p. 104.

Finlay, Q.C., and *Stokes* for the appellant.

Inderwick, Q.C., and *Searle contrà.*

Cur. adv. vult.

Their LORDSHIPS, on November 20, affirmed the decision of Butt, J. The judge below had not, as was argued, intended to lay down any general rule that the clause should be always omitted, but had exercised a discretion under the particular circumstances of the case; that that discretion was clearly given by the 20 & 21 Vict. c. 85; and there was nothing to show that the discretion had been improperly exercised.

Court of Appeal.
LORD ESHER, M.R.
LINDLEY, L.J.
LOPES, L.J.
Nov. 10.
} SMITH *v.* WOOD & Co.

Weights and Measures—Sale of Coal—Mode of Weighing—Action for Penalty—Metropolis Coal Act (1 & 2 *Vict. c.* lxxvi.), *s.* 57.

Appeal from the decision of a Divisional Court.

Action under section 57 of the Metropolis Coal Act to recover penalties for delivering sacks of coal deficient in weight. The plaintiff, who was the purchaser of coals from the defendant, requested the defendant's carman to weigh the sacks in the presence of a metropolitan police constable. The carman, instead of weighing the sacks in the manner provided by section 57 of the above-mentioned Act—viz. by weighing 'all the sacks both with and without the coals therein'—weighed them by putting the sacks of coal successively in one scale of the weighing-machine and the weights and an empty sack in the other scale. The sacks were found to be deficient in weight.

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The Divisional Court (DENMAN, J., and CHARLES, J.), upon the authority of *Meredith* v. *Holman*, 16 M. & W. 798; 16 Law J. Rep. Exch. 126, held that the mode of weighing prescribed by the statute had not been followed, and gave judgment for the defendant.

J. B. Walker and *Blackwell* for plaintiff.

Cock, Q.C., and *Chester Jones*, for defendant, were not called on.

Their LORDSHIPS dismissed the appeal.

Solicitors: S. Roberts for plaintiff; Lewis & Sons for defendant.

HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
Nov. 13, 14.
} CASE *v.* CASE.

Married Woman—Marriage of Englishman with Foreigner—Foreign Marriage Contract—Disability of Married Woman according to Foreign Law—Family Arrangement—Lapse of Time.

An Englishman in 1834 married a subject of the King of the Two Sicilies. Before the marriage he executed a marriage contract in Sicilian form, by which he purported to give to his wife half the real and personal estate which he then held or might thereafter hold, to be part of her 'dowry' and her 'exclusive and sole property.' There was evidence to show that a wife's dowry was by Sicilian law inalienable during the coverture.

In 1847 the husband and wife joined in executing a settlement in the English form of real estate of the husband. The settlement was expressed to be executed in order to avoid doubts which had arisen as to the construction and effect of the contract of 1834.

In 1886 a deed was executed by the husband and wife, which purported to confirm the contract of 1834 and to set aside the settlement of 1847. This deed made a disposition of the property widely different from that which was effected by the settlement of 1847.

The husband died after having made a will which confirmed the marriage contract and annulled the settlement of 1847.

The tenant-in-tail under the settlement brought his action to enforce the settlement and to obtain a declaration that the contract of 1834 was void. The widow brought a cross-action to enforce the marriage contract and to have the settlement of 1847 set aside.

Renshaw, Q.C., and *T. L. Wilkinson; à Beckett Terrell*; *Marten, Q.C.*, and *George Henderson; Robinson, Q.C.*, and *R. J. Parker;* and *Gaskell*, for the parties.

KAY, J., held that there were grave doubts as to the effect of the document of 1834; that the settlement of 1847 was a *bonâ fide* family arrangement to avoid these doubts; and that, as the widow had acquiesced in that settlement for forty years, the Court would not set it aside.

Solicitors: Venning, Son & Manning; Bircham & Co.; Ford, Ranken, Ford & Co.

Chancery Division.
NORTH, J.
Oct. 30.
} *In re* BARRETT. WHITAKER *v.* BARRETT.

Practice—Execution—Retainer—Order for Accounts—Rules of Supreme Court, 1883, *Order XV., rule* 1.

On the marriage of Mr. and Mrs. Barrett in 1884 two settlements were executed, by one of which Mr. Barrett covenanted to pay 4,000*l.* within twelve months, and by the other he covenanted to pay 300*l.* within three years.

Shortly after Mr. Barrett's death, without having paid either of the covenanted amounts, and leaving his widow his sole executrix, the plaintiffs, who were creditors of Mr. Barrett, commenced an action for the administration of his estate, and in February, 1888, they obtained an order against the executrix for accounts, under Order XV., rule 1. She was afterwards appointed trustee of both the settlements, and having thereby become a creditor of the estate, she retained parts of the moneys come to her hands as executrix in part satisfaction of her claims under the covenants in the settlements. The estate was insolvent, and the plaintiffs took out the present summons for the purpose of contesting the widow's right to retain.

F. Thompson for the plaintiff.

Cozens-Hardy, Q.C., and *Ribton* for Mrs. Barrett.

NORTH, J., held that the widow was entitled as executrix to retain for the debts due to her as trustee, notwithstanding the order for accounts and the fact that her appointment as trustee was later in date.

Solicitors: Kemble & Co.; Agate & Garnett.

Chancery Division.
NORTH, J.
Nov. 9.
} *In re* DRUMMOND'S PATENT.

Practice—Petition to Revoke Patent—Patents, Designs, and Trade-marks Act, 1883, *s.* 26—*Service—Patentee out of the Jurisdiction.*

This was a petition, presented under section 26 of the above Act, for revocation of a patent.

The petitioners alleged that they had publicly manufactured and sold within this realm, before the date of the patent, 'articles made with the contrivance the subject of the patent.'

The respondent, the patentee, was resident and domiciled in Scotland. He had received a copy of the petition, with particulars of the petitioners' objections, and had written to say that he did not intend to appear, and claimed exemption from the jurisdiction, on the ground of his not being resident in England.

Moulton, Q.C., and *Lawson* now asked for the direction of the Court as to how the petition should be tried. They submitted that no technical service of the petition was necessary; that as soon as the petition was presented the jurisdiction of the Court attached; and asked that the petition might be set down in the list of witness actions.

NORTH, J., made an order *nisi* that the petition

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should be set down as an action with witnesses, unless the respondent should, on or before the 22nd, show cause why that course should not be adopted. If the respondent should then appear, it would be open to him to dispute the jurisdiction.

Solicitors: J. H. Johnson, Son & Ellis.

Chancery Division. North, J. Nov. 16. } WOOD *v.* GREGORY.

Practice—Partition Action—Form of Judgment—Evidence of Title at Hearing—Inquiry as to Persons Interested.

Short cause.

This was a partition action brought by the owners of one moiety of certain real estate against the owners of the other moiety.

There was an affidavit that all the persons interested in the property were parties to the action. The value of the property was about 10,000*l.*

H. M. Humphry, for the plaintiffs: As the affidavit shows that all the persons interested are parties to the action, I ask for an immediate order for sale without the usual inquiry at chambers as to the persons interested. This course was adopted by Kay, J., in *Re Stedman*, L. R. W. N. 1888, p. 119.

W. Baker for some defendants.

Oswald for another defendant.

NORTH, J., could not accept *Re Stedman* as an authority that in all partition actions the usual inquiry at chambers was to be dispensed with, though it might be a very proper course in simple cases, and where the value of the property was small. In the present case it would be more convenient that there should be the usual judgment directing an inquiry as to the persons interested.

Solicitors: Torr & Co. for plaintiffs; W. M. White and Chester & Co. for defendants.

Chancery Division. Stirling, J. Nov. 9. } *In re* THE LAW COURTS CHAMBERS COMPANY.

Company—Winding up—Petitioning Creditor—Companies Act, 1862, *s.* 82.

This was a petition presented by the executors of the late F. Chifferiel asking for the winding up of the above-named company.

The question was whether the executors were creditors under section 82 of the Companies Act, 1862.

It appeared that the Public Chambers Company had executed a mortgage of certain property, some of the directors, of whom Chifferiel was one, being parties to the deed and jointly and severally covenanting with the mortgagees for the payment of the mortgage debt and interest. The Public Chambers Company afterwards assigned their equity of redemption to the Law Courts Chambers Company, who covenanted with the Public Chambers Company to pay the mortgage debt and interest, and to indemnify the Public Chambers Company in respect thereof. Neither Chifferiel nor any other of the sureties was a party to this deed. The Public Chambers Company had been wound up, and the executors of Chifferiel had been called upon to pay, and had paid to the mortgagees a sum of money in respect of principal, interest, and costs. They contended that the money had been paid on behalf of the Law Courts Chambers Company, and that, therefore, they were creditors of that company entitled to present the present petition.

Graham Hastings, Q.C., and *E. Beaumont* for the petitioners.

Buckley, Q.C., and *Edwin Ward* for the company.

STIRLING, J., held that, though the Public Chambers Company might, if they had paid the money, have had a remedy against the Law Courts Chambers Company under the covenant for indemnity, the mortgagees could not have sued the Law Courts Chambers Company personally for the debt, and the sureties could not stand in any better position. The relation of debtor and creditor was therefore not established between the parties, and the executors were not creditors entitled to present a winding-up petition under the section. The petition was therefore dismissed, with costs.

Solicitors: Angell Imbert (Terry & Paige) for the company: Beaumont & Son for the petitioners.

Chancery Division. Stirling, J. Nov. 13. } *In re* GOLDSMID. MOCATTA *v.* ATTORNEY-GENERAL.

Charitable Bequests—Gift of Capital towards the Establishment of a School—Validity.

Testatrix, who died in February, 1889, by her will dated in May, 1885, made the following bequest: 'I bequeath to F. D. Mocatta and A. G. Henriques, or other the trustees or trustee for the time being of the projected training or normal school of Jewish teachers, the sum of 3,100*l.* new 3 per cent. annuities, part of a larger amount of like annuities standing in my name in the books of the governor and company of the Bank of England, to be applied by such trustees towards the establishment of such projected or normal school.' The testatrix also directed one-half of her residuary real estate to be applied for the same purpose. The testatrix had, in her lifetime, proposed to found a training school for Jewish teachers, and she received from time to time various contributions in aid of this project, which were invested in the names of trustees, and the dividends arising from such investments were applied by her in having persons of the Jewish faith trained in existing training schools; but no training school for Jewish teachers was ever founded in her lifetime.

A summons was taken out by the executors of the will to determine whether these bequests were void under the Charitable Uses Act.

Fox for the summons.

Alexander, for one of the trustees of the charity,

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contended that the first word ('establishment') in the will did not necessarily involve the permanent acquisition of land, and consequently that the gifts were not within the statute, and relied upon a decision of NORTH, J., in *In re Rosas* (*Sol. J.*, June 29, 1889); and, secondly, that effect ought to be given to the bequests *cyprès*.

Ingle Joyce, for the Crown, supported the same view. *Graham Hastings*, *Q.C.*, and *Mozley*, *contrà*.

STIRLING, J., held, upon the authority of *Tatham* v. *Drummond* (34 Law J. Rep. Chanc. 1), that the bequests were void; but he desired to confine his decision to the case of a bequest of capital.

Solicitors: Emanuel & Simmonds; Hare & Co.

Chancery Division. STIRLING, J. Nov. 13, 14. } THE BRITISH WATER-GAS SYNDICATE (LIM.) *v.* THE NOTTINGHAM AND DERBY WATER-GAS COMPANY (LIM.).

Company—Winding-up—Motion to Restrain.

By an agreement made on April 26, 1889, between the plaintiff company and a trustee for the defendant company, it was agreed that the defendant company should pay the plaintiffs 50,000*l.* in cash and 51,000*l.* in shares, for the exclusive right to use a certain patented invention. On April 27 the defendant company was incorporated with a nominal capital of 151,000*l.*, divided into 30,200 shares of 5*l.* each, and on May 1 an agreement was entered into between the two companies confirming the previous agreement. The shares were not allotted to the plaintiffs, and in August the plaintiffs commenced an action against the defendant company for specific performance of the agreement of May 1.

On November 4 a circular signed by the chairman of the defendant company was sent to the shareholders referring to the action for specific performance, and stating that the directors did not consider it advisable, in the interests of the company, that the agreement should be carried out for reasons which would be stated thereafter. It was further stated that they had filed a petition for the winding up of the company. The circular was accompanied by a notice of an extraordinary meeting to be held on November 14 for the purpose of passing resolutions for the voluntary winding up of the company.

The plaintiffs then commenced a second action against the defendant company to restrain them from passing any resolutions for a voluntary winding-up until after the claim of the plaintiffs to an allotment of 10,200 shares had been decided, or until the allotment of such shares, and served notice of motion upon the company.

The only evidence in opposition to the motion was an affidavit by the solicitor of the defendant company, in which a case of misrepresentation was, for the first time, set up against the plaintiffs. It appeared that the board of the defendant company consisted of five directors, two of whom were opposed to the repudiation of the agreement, and that the course taken by the company was really controlled by the three remaining directors.

On behalf of the plaintiffs it was contended that they were entitled to shares in a going concern, and that, if the shares had been allotted to them, they would have been able successfully to resist the proceedings for a winding-up, and that the defendants ought not to be permitted to deprive the plaintiffs of the benefit of their agreement.

Graham Hastings, *Q.C.*, and *Swinfen Eady* for the motion.

Sir H. Davey, *Q.C.*, *Buckley*, *Q.C.*, and *Chadwyck-Healey* for the plaintiffs.

Emden watched the proceedings on behalf of a third party.

STIRLING, J., regretted that the directors had not afforded the Court any information as to their reasons for repudiating the agreement, and his lordship was disposed to make every presumption against them; but the motion was against the company alone, and the acts it was proposed to restrain were not the acts of the directors, but of the shareholders. The question whether the company should go on or not was one peculiarly fitted for the consideration of the shareholders, and the Court ought not to interfere with the *bonâ fide* exercise of their discretion. The motion was refused without prejudice to any other application which the plaintiffs might be advised to make, and leave to amend the writ was granted.

Solicitors: Kaye & Guedalla; Taylor, Son & Hoare (agents for Maples & M'Craith, Nottingham); and Chinery, Aldridge & Co.

Chancery Division. KEKEWICH, J. Nov. 16. } *Re* JONES.

Practice—Appointment of New Trustees—Vesting Order—Originating Summons—Order LV., rule 13 (*a*)—*Trustee Act*, 1850, *ss.* 35, 43.

In May, 1889, proceedings were instituted by originating summons for the appointment of a new trustee and a vesting order. On June 22, 1889, an order was made upon motion in those proceedings as asked by the summons. The Bank of England having refused to recognise the validity of the vesting order so made, the parties who had obtained the order now applied for an order to direct the bank to comply with the order.

Neville, *Q.C.*, and *P. O. Lawrence* and *Farwell* in support of the application.

Latham, *Q.C.*, and *T. H. Wright*, for the Bank of England, opposed.

KEKEWICH, J., held that the matter was simply a question of 'practice or procedure,' within the Judicature Act, 1875, section 17, and the rule established by Order LV., rule 13 (*a*), was validly made. A new trustee might now be appointed upon summons instead of upon petition as formerly, and there being a 'matter' properly initiated by summons, a vesting order could also properly be made upon a motion in that matter, under section 43 of the Trustee Act, 1850. The objection taken by the bank was, consequently, overruled.

Solicitors: Venn & Co. for Collins, Robinson & Co., Liverpool; Freshfields; Pritchard, Englefield & Co.

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Chancery Division. Kekewich, J. Nov. 16. } In the Matter of an Arbitration between A. Oliver and J. B. Cotton and T. B. Scott.

Arbitration—Award—Setting aside Award—Time—Extension of Time—Jurisdiction—9 & 10 Wm. III. c. 15, s. 2—Judicature Act, 1873, s. 26—Judicature Act, 1875, s. 17—Rules of Court, 1883, Order LXIV., rules 7, 14.

Under an agreement for arbitration it was provided that the submission and award might be made a rule of Court. The award was made and published on August 11, 1888, and the award was made a rule of the Chancery Division on October 24, 1889.

One of the parties now applied by motion that, notwithstanding that the prescribed time for applying to set aside the award had expired, the applicant might be at liberty to move to set it aside on the ground of fraud on the part of one of the parties and misconduct on the part of the arbitrators.

The application was opposed upon the ground that there was no jurisdiction to enlarge the time for moving to set aside the award, which was a statutory right not to be affected by an alteration in the rules of practice.

By 9 & 10 Wm. III. c. 15, s. 2, an application of this nature must be made before the last day of the term next after the award. By the Judicature Act, 1873, s. 26, legal terms were abolished; but it was provided that they might still be referred to in all cases where used as a measure of time within which an act was required to be done.

By Order LXIV., rule 7, it is provided that the Court or a judge may enlarge the time fixed by the rules for taking any proceeding, and by rule 14 of the same order an application to set aside an award may be made at any time before the last day of the sittings next after the award.

Warmington, Q.C., and *Astbury* for the applicant.

Henn Collins, Q.C., and *A. G. Roby* opposed.

Kekewich, J., overruled the objection, holding that Order LXIV., rules 7 and 14, being regulations made by the rule committee under the statutory power conferred by the Judicature Act, 1875, s. 17, and relating to matters of practice or procedure, were provisions made by lawful authority (under the Judicature Act, 1875, s. 17), superseding the statutory provision of 9 & 10 Wm. III. c. 15, s. 2, as to the time within which an application to set aside an award must be made.

Solicitors: Pritchard, Englefield & Co. for Booth & Edgar (Manchester); Bower, Cotton & Bower for Allen, Prestage & Halkyard (Manchester).

Bankruptcy. Oct. 30. } *In re* Yarrow. *Ex parte* The Board of Trade.

Bill of Sale—Receipt for Purchase-money of Goods—Hire-and-purchase agreement—Loan upon Security of Goods—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 4; Bills of Sale Act (1878) Amendment Act, 1882 (45 & 46 Vict. c. 43), s. 9.

Motion by trustee in bankruptcy for an order declaring a receipt given by the bankrupt to W. and a hire-and-purchase agreement between the bankrupt and W. void as against the trustee for non-registration under the Bills of Sale Acts.

The bankrupt had been in partnership with W.'s brother in a sawmill business, and, in order to pay him out on the dissolution of the partnership, an arrangement was made, in pursuance of which W., a solicitor, purchased some of the machinery in the mill for 650*l.*, which was paid to the bankrupt, and which he acknowledged in writing that he received in full payment of the engine, boiler, and machinery, which he had agreed to sell at that price. On the next day a hire-and-purchase agreement was executed by the bankrupt and W., by which the bankrupt hired the machinery from W. at the sum of 50*l.* for each half-year, and it was agreed that when such half-yearly payments amounted in the aggregate to 1,000*l.* the whole of the machinery should revert to him absolutely on payment of a further sum of 5*l.*

Neither the receipt nor the agreement was registered under the Bills of Sale Act; but name-plates stating W. to be the owner were affixed to the machines, in possession of which the bankrupt remained for about eighteen months, at the end of which time he filed his petition and was adjudged bankrupt.

H. Reed for the trustee.

H. Greenwood for the claimant.

Cave, J., held that he was unable to reconcile the decision of the Court of Appeal in *The Yorkshire Wagon Company* v. *Maclure*, 51 Law J. Rep. Chanc. 857; L. R. 21 Chanc. Div. 309, in which it was held that the transaction was not a borrowing of money but a *bonâ fide* sale and hiring of the rolling stock—approved in *The Manchester, Sheffield, and Lincolnshire Railway Company* v. *The North Central Wagon Company*, 56 Law J. Rep. Chanc. 609; L. R. 13 App. Cas. 554, which was, however, distinguishable with the opposite decision of the same Court in *Gapp* v. *Bond*, 56 Law J. Rep. Q. B. 438; L. R. 19 Q. B. Div. 200—and that in those circumstances he should adopt the former, and hold that there was no document requiring registration, and that the claimant was entitled to the proceeds of the machinery.

Solicitors: Goldberg & Sons for the trustee; W. T. Weymouth for the claimant.

Bankruptcy. Nov. 1. } *In re* Gee. *Ex parte* The Official Receiver.

Bankruptcy—Leaseholds—Disclaimer by Trustee—Land Burdened with onerous Covenants—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 55, 89—Bankruptcy Rules, 1886, rr. 323, 333.

On September 10, 1886, a piece of land was demised to G. for a term of ninety-nine years, from September 29, 1886, at a ground rent, the indenture containing covenants by the lessee to pay the ground rent and all rates, taxes, and outgoings chargeable upon the premises, and to build thereon six houses to cost at least 900*l.*, and to construct drains for, and paint, and keep in repair the houses when built, and yield them up in good repair to the lessor at the end of the term.

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On July 27, 1887, by an indenture reciting the above and that there was due to the lessor from G. a sum of 810*l.* for advances and interest, G. assigned to the lessor the land with the six houses, which had then been erected, for the residue of the term, subject to a proviso for redemption on payment of the amount due and interest.

On January 16, 1889, G. was adjudicated a bankrupt in the Birmingham County Court; and on January 18 an order was made for the summary administration of his estate, and the official receiver of the district became trustee of his property.

On June 28, 1889, the equity of redemption in the premises being of no value and the bankrupt's estate without any assets, the official receiver, pursuant to the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 89, and rules 323 and 333 of the Bankruptcy Rules, 1886, applied to the Court for directions as to whether, in order to free the bankrupt's estate and the trustee from liability, it was necessary for him to apply for leave to disclaim the equity of redemption and his interest in the property.

The County Court judge thereupon stated a special case, under the Bankruptcy Act, 1883, s. 97, for the opinion of the High Court as to whether the interest which the bankrupt had in the demised premises at the commencement of the bankruptcy consisted of land burdened with onerous covenants, or binding the possessor thereof to the performance of any onerous acts or to the payment of any sum of money, within the meaning of the Bankruptcy Act, 1883, s. 55.

Muir Mackenzie for the official receiver.

CAVE, J., held that the case was not within the Bankruptcy Act, 1883, s. 55, and that, therefore, no application for leave to disclaim was necessary.

Solicitor: The Solicitor to the Board of Trade.

Queen's Bench Division.
(Supplementary Case.)
Nov. 9.

REGINA *v.* PARLBY.

Costs—Jurisdiction to Award—Order Absolute to Quash Conviction for Nuisance—Criminal Cause or Matter.

On February 6 last an order *nisi* for a *certiorari* to bring up and quash an order of justices, directing an unconditional discontinuance of a flow of sewage into subsidence tanks by the Compton Gifford Local Board, was made absolute. The case is fully reported in 58 Law J. Rep. M. C. 49 (April number, 1889). The present application was on behalf of the Compton Gifford Local Board for costs against the Plympton St. Mary Sanitary Authority.

G. F. E. Knox (*R. S. Wright* with him) in support.

Foote opposed, and contended that a conviction for nuisance was a criminal cause or matter (*Ex parte Whitchurch*, 50 Law J. Rep. M. C. 99; L. R. Q. B. Div. 534), and that the Court had no jurisdiction to award costs of a *certiorari* to bring up and quash such a conviction.

The COURT (HUDDLESTON, B., and WILLS, J.) held that the application must be refused, since they had no jurisdiction to award costs. A report on the subject prepared by the master of the Crown Office was then read by the learned baron as follows: 'Before the passing of the Judicature Acts and the application of Order LV. (Costs), now Order LXV. (Costs), to all civil proceedings on the Crown side by Order LXIII., rule 2, of the Rules of 1880, there were no costs on *certiorari* to remove orders, or, indeed, on *certiorari* at all (Corner's "Crown Practice," pp. 78, 79), because the Court had no original jurisdiction or statutory power to grant any costs on *certiorari*, and could only discharge a rule *nisi* for a *certiorari* with costs by virtue of its inherent jurisdiction to discharge any application with costs, though it might have no jurisdiction to hear the matter itself (*Mackintosh* v. *The Lord Advocate* (H. L. Sc.), 2 App. Cas. 41). When, before the Judicature Acts and the Rules of 1880, a rule *nisi* for a writ of *certiorari* to remove an order of justices was made absolute, it was made absolute without costs. The writ then issued as now, but, before it can be allowed, the prosecutor seeking to quash the order is obliged, by 5 Geo. II. c. 19, s. 2, and Crown Office Rules, 1886, rule 36, to enter into a recognisance to pay the costs if he should be defeated—*i.e.* if the order should be affirmed. And it was by virtue of the recognisance alone, on an order removed being put into the paper on rule *nisi* to quash, and not by order of the Court, that he had to pay costs if the order of justices was affirmed; and if he succeeded—*i.e.* if the order was quashed—could not get his costs, because the Court had no original or statutory jurisdiction to grant them. In November, 1880, in *Clark* v. *The Alderbury Union*, 50 Law J. Rep. M. C. 33; L. R. 6 Q. B. Div. 139, the Court held that where an order amending a poor-rate, subject to a case stated upon it for the opinion of the Court, was removed, not by *certiorari*, but under the Summary Jurisdiction Act, 1879, for the purpose of its being quashed, it being a civil proceeding on the Crown side, the costs—there being none otherwise—were, by virtue of the application of Order LV., now LXV., in the discretion of the Court; in effect holding that Order LXV., rule 1, created costs where there were none before. Since that case and *Reg.* v. *Morris*, 31 W. R. 609, to the time of the decision of *In re Mills's Estate*, 56 Law J. Rep. Chanc. 61; L. R. 31 Chanc. Div. 24, given by the Court of Appeal in 1886, the Queen's Bench Division has in cases of *certiorari* for an order, civil in itself, followed *Clark* v. *The Alderbury Union*, and dealt with costs on either side—*i.e.* from 1880 to 1886. In the last-mentioned year, in the case of *In re Mills's Estate*, the Court of Appeal held that Order LXV. (Costs) did not give any jurisdiction to award costs where there were none before the Judicature Acts, but that it only regulated the mode in which costs were to be dealt with where the Court antecedently had jurisdiction, either original or statutory, to award them. It seems to follow, therefore, that as the Queen's Bench had no jurisdiction, original or statutory, to award costs on *certiorari*, it cannot do so by virtue of Order LXV. (Costs), and the matter remains the same as it did before 1880. I can only say, further, that whenever I have been in attendance in Court, and have, in cases of *certiorari*, drawn the attention of the Court to the decision *In re Mills*, which I have always done since I first knew of the decision, the Court has invariably refused to deal with the costs. The case of

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Clarke v. *The Alderbury Union* was not cited in *In re Mills's Estate.*'

Application refused.

Solicitors: Bush & Co. and Torr, Janeway & Co.

Queen's Bench Division. Nov. 19. } *In re* DOMMETT PAUL. *Ex parte* PORTARLINGTON (EARL OF). APPLICATION UNDER AGRICULTURAL HOLDINGS ACT, 1883.

Landlord and Tenant—Determination of Tenancy—Custom of Country—Claim for Compensation—Notice of Claim—Agricultural Holdings Act, 1883 (46 & 47 *Vict. c.* 61), *s.* 7.

This was a motion for prohibition relative to the appointment by a County Court judge of a referee under the Agricultural Holdings Act, 1883. The tenant, from year to year, of a farm of 1,223 acres in Dorsetshire, had given his landlord due notice determining the tenancy on October 11, 1888. When that day arrived the tenant gave up possession of about 1,000 acres, but retained the farmhouse and some 200 acres of land, in accordance with the custom of the country, till February, 1889. On December 10, 1888, the tenant gave the landlord the two months' notice of claim for compensation in respect of the whole farm under section 7, and called upon him to appoint a referee. The landlord, conceiving that the tenant was out of time, the tenancy having been determined on October 11, 1888, and the tenant only holding over a portion of the farm in accordance with the custom of the country, declined to do so. Thereupon the tenant applied to the County Court judge and obtained the order of appointment of a referee, the subject of the present application.

Mackaskie in support.

Blake Odgers, in opposition, was not called upon to argue.

The COURT (LORD COLERIDGE, C.J., and MATHEW, J.) held that the prohibition must be refused. The notice under section 7 was in time, since the holding under the custom of the country did not expire till February. The words, 'determination of the tenancy' meant the end of the entire holding and the giving up of the whole of the land, and not merely the 1,000 acres, on October 11, 1888.

Motion refused.

Solicitors: Young, Jackson & Beard, and H. S. Clutton (agents for Andrew, Son & Huxtable), Dorchester.

Probate, Divorce, and Admiralty Division. Oct. 31. } STARBRUCK *v.* STARBRUCK AND OLIVER.

Divorce—Husband, Petitioner, guilty of Misconduct disentitling him to Relief—Matrimonial Causes Act, 1857 (20 & 21 *Vict. c.* 85), *s.* 31.

This was a husband's petition for dissolution.

The parties were married at Harley, in Leicestershire, July 25, 1876, and subsequently cohabited in Leicester until February, 1878, when they parted in consequence, as was alleged, of the respondent's extravagance.

In the course of his evidence the petitioner said: 'Shortly after my marriage I found my wife very extravagant. In February, 1878, I left her, because she ran me into debt 8*l.* There was no agreement how my wife was to be supported. I have not contributed to her support since that time, neither have I offered to do so. I have been getting 24*s.* a week for some years as an engine driver.'

H. B. Deane for the petitioner.

The respondent did not appear.

BUTT, J., held that the mere fact of the wife running her husband into debt was not sufficient to justify him in ceasing to cohabit with her and leaving her for years without support, and that the petitioner had been guilty of such neglect and misconduct as would justify the Court in refusing him relief under section 31 of the Matrimonial Causes Act, 1857.

Petition dismissed.

Solicitors: Routh, Stacey & Castle for H. Thompson & Son, Grantham.

Probate, Divorce, and Admiralty Division. Nov. 1. } ELLAM *v.* ELLAM.

Divorce—Bigamous Marriage—Evidence allowed to be Supplied by Affidavit—Insufficient Description of Deponent—Rule 138.

This was an undefended case, which was first heard May 20, 1889, when the respondent was shown to have contracted a bigamous marriage in America, but the evidence of subsequent cohabitation was insufficient. BUTT, J., gave permission for this evidence to be supplied by the affidavits of two respectable persons. (See 58 Law J. Rep. P. D. & A. 56.)

Nov. 1. *Bargrave Deane*, for the petitioner, tendered the affidavits of Evelina Richards and Susie B. Richards, sworn at Philadelphia. Evelina Richards described herself as follows: 'I am the wife of James Richards, and reside at 1724 Barker Street, in the city of Philadelphia, with my husband. We rent our rooms from Roger Harrison, who was the lessee.' Susie B. Richards described herself as follows: 'I live at 1728 Cherry Street, Philadelphia, and am twenty years of age. I am a daughter of Mr. and Mrs. James Richards, and a sister of Mrs. Evelina Richards by marriage. She is my brother's wife.'

BUTT, J., held that the deponents were not sufficiently described to satisfy the provisions of rule 138 of the Divorce Rules. The affidavit of the married woman should have contained a description of her husband, and that of the unmarried woman the description of her parents.

Case adjourned that the affidavits might be amended.

Solicitors: Godfrey, Rhodes, Firth & Co., for Piercy, Huddersfield.

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Probate, Divorce, and Admiralty Division. Oct. 29. Nov. 19. } IN THE GOODS OF JOHN SMITH, DECEASED.

Probate—Omission of Name Signed in Attestation Clause after those of two Attesting Witnesses from Grant—Wills Act (7 Wm. IV. and 1 Vict. c. 26), s. 15.

This was an application to omit the name of Emma Smith from the grant of probate of the will of John Smith, deceased, such name being signed in the attestation clause after those of the attesting witnesses.

John Smith, late of the Griffin Inn, Farnworth, in the county of Lancaster, duly executed his last will July 24, 1884, whereby he left a life interest to his wife Emma Smith in all his property, with remainder to his children. After the execution of the said will the testator asked his wife to write her name on the will in the attestation clause after the signatures of the attesting witnesses. It did not appear from the affidavits that Emma Smith signed her name as attesting witness, or indeed for any better reason than to gratify a whim on the part of the testator.

R. H. Pritchard (October 29) moved that the name of Emma Smith as an attesting witness be removed from the grant of probate of the will of John Smith. *In the Goods of Sharman*, 38 Law J. Rep. P. & M. 47; 1 L. R. Prob. Div. 661, is in point. There one of the legatees had signed the will after the attesting witnesses, and the Court, being satisfied that she had not signed the will as a witness, her signature was omitted from the grant. It is submitted that in the present case it is clear from the affidavits that Emma Smith did not subscribe the will as an attesting witness.

BUTT, J., having ascertained that the children who would become entitled in case the wife lost her life interest were minors, directed the registrar to nominate some suitable person to be served with notice of the appplication to omit the name of Emma Smith from the grant.

November 19.—This having been done, *R. H. Pritchard* renewed the application on behalf of Emma Smith, as above.

The COURT made the order as prayed.

Solicitors: Field, Roscoe & Co.

Probate, Divorce, and Admiralty Division. Nov. 19. } IN THE GOODS OF CATHERINE ECCLES, DECEASED.

Probate—Court of Probate Act, 1857, s. 73—Grant for the Use and Benefit of a Lunatic.

Catherine Eccles died June 18, 1879, intestate, leaving personal estate to the amount of 380*l.* Her husband, Thomas Eccles, the only person entitled in distribution, had been for many years a lunatic—not so found by inquisition—and was confined in the asylum for the county of Lancaster. The guardians of the poor of Ormskirk had expended altogether 117*l.* on his maintenance. His father, John Eccles, was also a person of weak intellect, and an inmate of the Ormskirk Union. Being asked to take a grant of administration to the goods of Catherine Eccles, for the use and benefit of his lunatic son, John Eccles positively declined to have anything to do with the matter.

Middleton, for the guardians of the poor of Ormskirk, now applied under section 73 of the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), for a grant, to the nominee of the Ormskirk guardians, of administration to The Goods of Catherine Eccles, deceased, for the use and benefit of the lunatic, and limited to such time as he should recover. He cited *In the Goods of Mary Burrell*, 1 Sw. & Tr. 64, where a similar grant was made to the stepmother of a lunatic not so found by inquisition.

BUTT, J., made the grant as prayed.

Solicitors for the applicants: Toller & Sons.

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Table of Cases.

HOUSE OF LORDS.

House of Lords. Nov. 21, 22. } NOUVION v. FREEMAN AND OTHERS.

Foreign Judgment—Final or Interlocutory—Foundation for Action in England.

This was an appeal from a decision of the Court of Appeal, reported 57 Law J. Rep. Chanc. 367.

Napier Higgins, Q.C., and *Finlay, Q.C.* (*Yate Lee* with them), for the appellant.

Rigby, Q.C., *K. E. Digby*, and *J. D. Davenport*, for the respondents, were not called upon.

Their LORDSHIPS (LORD WATSON, LORD BRAMWELL, LORD ASHBOURNE, and LORD HERSCHELL) dismissed the appeal, with costs.

Solicitors: Ewbank & Partington for the appellant; Freeman & Bothamley for the respondents.

COURT OF APPEAL.

Court of Appeal. COTTON, L.J. BOWEN, L.J. FRY, L.J. Nov. 20. } *Re* MARK SHEPHARD. ATKINS *v.* SHEPHARD.

Judgment for Debt—Death of Debtor—Order for Receiver—Rules of Supreme Court, 1883, Order XVII., rule 1; Order XLII., rule 23.

Appeal from decision of CHITTY, J.

On October 25, 1888, Cory, a creditor, obtained judgment against M. Shephard and his son, who was his partner, in an action in the Queen's Bench Division.

On August 2, 1889, the judgment creditor took out a summons in the Queen's Bench action for the appointment of a receiver of rents of real estate of M. Shephard by way of equitable execution. That summons came before POLLOCK, B., the vacation judge, who adjourned it to August 15 and then to August 22. Between August 15 and August 22 M. Shephard died intestate, and an action was then commenced by a creditor against his heir-at-law and widow for the administration of his estate, and on August 21 Pollock, B., appointed one Pratt a receiver of all M. Shephard's property until the appointment of an administrator of his estate. On August 22 Pollock, B., appointed Pratt receiver of the rents of the real estate of M. Shephard on the summons of Cory. On September 17 administration of Shephard's estate was granted to another of his sons. Cory applied in the administration action that the receiver should apply the rents of the real estate in satisfaction of Cory's judgment debt. CHITTY, J., refused the application on the ground that the order appointing Cory's receiver was invalid.

Cory appealed.

Romer, Q.C., and *Haldane* for appellant.

Byrne, Q.C., and *Dibdin*, for plaintiff in the administration action, and *Kingdon*, for administrator, were not called upon.

Their LORDSHIPS held that the Court had no jurisdiction, after the death of M. Shephard, to appoint a receiver in Cory's action of the rents of the real estate, which by his death and by law had passed to his heir-at-law. The order appointing a receiver was an order giving the plaintiff equitable relief, and could only be obtained against a person over whom the Court had jurisdiction. The effect of Order XVII., rule 1, was to keep the action alive against the surviving defendant, the son, but not to do so against the deceased father so that an order could be made affecting his estate without the estate being represented. The appeal must, therefore, be dismissed.

Decision of Chitty, J., affirmed.

Solicitors: Deacon, Gibson and Medcalf for appellant; R. J. Whitley for respondents.

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Court of Appeal.
COTTON, L.J.
BOWEN, L.J.
FRY, L.J.
Nov. 20.

In re THE NEW EBERHARDT COMPANY (LIM.). *Ex parte* MENZIES.

Company—Shares—Rectification of Register—Shares to be held as fully paid up in Cash—Registered Agreement—Execution by Company only—Companies Act, 1867, *s.* 25.

The filing of a memorandum of agreement purporting to be between a company and the persons mentioned in the schedule thereto, for the issue of shares as fully paid up, but executed by the company only and not by the allottees of shares, is not the filing of a contract 'duly made in writing' in compliance with the provision of section 25 of the Companies Act, 1867.

Decision of STIRLING, J. (noted *ante*, p. 86), reversed.

Whinney for appellant.

Grosvenor Woods for respondent.

Solicitors: Snell, Son & Greenip.

Court of Appeal.
COTTON, L.J.
BOWEN, L.J.
FRY, L.J.
Nov. 20.

GLASIER *v.* ROLLS.

Appeal—Shorthand Notes—Evidence—Judgments—Application after Order Passed and Entered.

After an order of the Appeal Court has been passed and entered, the Court will not direct the costs of the transcripts of shorthand notes of the evidence in the Court below and of the judgments in a case in the House of Lords used on the hearing of the appeal to be allowed. To do so would be to alter a fixed order of the Court, which will only be done when through a slip the order does not express the intention of the Court at the time when the order was made. An application for that purpose should be made at the hearing or immediately after judgment is given.

Semble, except in extreme cases the costs of shorthand notes of the evidence will not be allowed; the judge's notes, coupled with the notes of counsel, ought generally to be sufficient.

Muir Mackenzie for the applicants.

Warmington, Q.C., and *Solomon* for the respondents.

Solicitors: E. T. Tadman for the appellants; Byrne & Lucas for the respondent.

Court of Appeal.
LORD ESHER, M.R.
LINDLEY, L.J.
LOPES, L.J.
Nov. 22.

In re HARRIS.
Ex parte HARRIS.

Bankruptcy—Appeal—Notice to the Official Receiver—Stay of Proceedings.

Appeal from a receiving order of Registrar Hazlitt, dated November 8. The proceedings had been stayed pending appeal.

Read, for the petitioning creditor, took the preliminary objection that notice of the appeal had not been given to the official receiver. He cited *Ex parte Ward*, L. R. 15 Chanc. Div. 292; and *Ex parte Dixon*, 53 Law J. Rep. Chanc. 769; L. R. 13 Q. B. Div. 118.

Woolf (*Cannot* with him) for the debtor.

LORD ESHER, M.R.: We are clearly of opinion that in an appeal against a receiving order in which proceedings have been stayed no notice of appeal need be given to the official receiver. We reserve for consideration the question in what cases notice ought to be given.

Objection overruled.

Solicitors: J. D. Lewis and Howell Thomas.

Court of Appeal.
LORD ESHER, M.R.
LINDLEY, L.J.
LOPES, L.J.
Nov. 25.

THE BURTON-ON-TRENT CORPORATION *v.* THE EGGINTON CHURCHWARDENS, &c.; THE SAME *v.* THE STRETTON CHURCHWARDENS, &c.

Poor-rate—Sewage Farm—Pumping Station—Loss in Working—Occupation of Farm neither Profitable nor Beneficial—Severance of Pumping Station from Sewage Farm—Hypothetical Tenant from Year to Year.

Appeal from the Divisional Court (reported 58 Law J. Rep. M. C. 137).

Under the provisions of a private Act the Corporation of Burton-on-Trent acquired land for the disposal of sewage at a distance from, and provided a pumping station near, the town. Although crops were produced, it was impossible to work the sewage farm except at a loss, and the pumping station, whilst used as a part of the sewage system, was incapable of yielding a profit.

The Divisional Court (LORD COLERIDGE, C.J., and STEPHEN, J.) held that, the occupation of the sewage farm by the corporation being neither profitable nor beneficial, they were not rateable in respect of it; but that the pumping station, which, if severed from the system, might be let to an hypothetical tenant for 100*l.* a year, ought to be rated at 75*l.* upon the principle laid down in *The Metropolitan Board of Works* v. *West Ham*, 40 Law J. Rep. M. C. 30.

The Attorney-General (*Sir R. Webster, Q.C.*) and *Fullarton* for the churchwardens.

Bosanquet, Q.C., and *Etherington Smith* for the corporation.

Their LORDSHIPS allowed the appeal, being of opinion that the case was governed by *Regina* v. *The School Board of London*, 55 Law J. Rep. M. C. 169; that the question was not whether there was a profitable occupation, but whether the occupation was beneficial, and that an occupying owner who could make no profit out of his occupation must be taken into account if he is capable of becoming a tenant of the premises; and that the point, although it might have been, was not raised either in the West Ham case or in *Regina* v. *The Metropolitan Board of Works*, L. R. 4 Q. B. 15.

Solicitors: Geare, Son & Pease (for J. & W. J. Drewry, Burton-on-Trent), for corporation; J. & C. Robinson & Wilkins (for Henry Goodger, Burton-on-Trent), for churchwardens.

HIGH COURT OF JUSTICE.

Chancery Division.
CHITTY, J.
Nov. 22.

DE FRANCESCO *v.* BARNUM AND OTHERS.

Infancy—Apprenticeship—Injunction—Covenant to Serve.

Motion by the plaintiff, a teacher of stage-dancing, for an interim injunction restraining two infant defendants from infringing a covenant contained in an apprenticeship deed not to enter into professional engage-

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ments without the written permission of the plaintiff, their master, and also restraining their mother, who was party to the deed, and other defendants, who had engaged the infants, from allowing the infants to perform without such permission.

Romer, Q.C., and *Kalisch* for the plaintiff.

Byrne, Q.C., and *Lemon*, and *T. L. Wilkinson* for the defendants.

CHITTY, J., for the purpose of deciding the motion, relied on *Gylbert* v. *Fletcher*, Cro. Car. 179, wherein it was held that on an apprenticeship deed no action for covenant would lie against the apprentice. As equity followed the law, he, therefore, refused to grant an injunction. Costs to be costs in the action.

Solicitors: Brandon & Nicholson; Campbell, Reeves & Hooper; and H. Levy.

Chancery Division. STIRLING, J. Nov. 12, 14. } GRIFFITH *v.* POUND.

Mortgage—Consolidation—Several Mortgages by same Mortgagor to one Mortgagee—Assignment of Equity of Redemption in one Mortgage—Notice by Mortgagee to Purchaser to Pay off the one Mortgage—Right to consolidate all, but not some only, of several Mortgages.

This was a summons for foreclosure of three out of six mortgages all executed by the same mortgagor in favour of the plaintiff. The defendant had purchased the equity of redemption of the property comprised in one of the mortgages, which was dated January 25, 1888, and secured the repayment of 14,200*l.* and interest. On February 27, 1889, the plaintiff gave the defendant notice requiring him to pay off the mortgage of January 25, 1888, at the end of three months. The defendant made preparations for paying off the mortgage, and of that the plaintiffs were aware. At the end of the three months the defendant tendered to the plaintiffs the amount due in redemption of the mortgage. The tender was refused by the plaintiffs, who claimed the right to consolidate the three mortgages mentioned in the summons.

Sir Horace Davey, Q.C., *Hastings, Q.C.*, and *Ingle Joyce* for the plaintiffs.

Rigby, Q.C., and *George Henderson*, for the defendant, contended that the plaintiffs, by giving notice to pay off the one mortgage, had elected not to exercise their right of consolidation, and could not assert it after the defendant had incurred expense in making preparations for paying off the mortgage; and, further, that in any case the plaintiffs had no right to consolidate the three mortgages mentioned in the summons, but must consolidate all the six mortgages.

STIRLING, J., held that there had been no election, the object of giving the notice being to acquire a power of sale, and not to elect. He thought that the plaintiffs' right was the same as if there had been but one mortgage, and they had given a notice requiring payment, but naming a less sum than was actually due. In that case they would not be precluded by the notice from claiming what was justly due. He also thought that no wrong was done to the defendant by the plaintiffs' assertion of their right, for, although he might infer that the defendant had incurred expenses in making preparations for paying off the mortgage, it was necessary for him to establish also (1) that he was misled by the notice, and (2) that he had made expenditure which he would not have made had he not been misled, and this he had not done. His lordship thought that the plaintiffs were not entitled to consolidate the three mortgages, but declared that they were entitled to consolidate all the six mortgages.

Solicitors: Grover & Humphreys; William Negus.

Queen's Bench Division. Nov. 20. } THE GUARDIANS OF MITFORD UNION (APPELLANTS) *v.* THE GUARDIANS OF WAYLAND UNION (RESPONDENTS).

Poor-Law—Child over Sixteen—Derivative Settlement from Father—11 & 12 Vict. c. 111, s. 1—Divided Parishes Act, 1876 (39 & 40 Vict. c. 61), s. 35.

Case stated by the Court of Quarter Sessions for Norfolk upon an appeal against an order of justices for the removal of Jane Neville, a pauper, from the Wayland Union to the Mitford Union. The pauper was the legitimate child of John Neville, and was born on February 29, 1872. She became chargeable to the Wayland Union in August, 1888, being then over sixteen years of age, in consequence of sickness producing permanent disability. Relief was given to her in her own name. John Neville had acquired a settlement by residence in the parish of Shipdham, in the Mitford Union, but in October, 1887, he removed to the parish of Hockham, in the Wayland Union, where he had since resided. The pauper had always resided with her father as part of his family. At the date of the order for removal her father had resided at Hockham, in the Wayland Union, for twelve months, under circumstances rendering him irremovable from that union.

Greene, Q.C., and *Thorne* for the appellants.

Poland, Q.C., and *Morton Smith* for the respondents.

The COURT (LORD COLERIDGE, C.J., and MATHEW, J.) held that the pauper came within the proviso to section 1 of 11 & 12 Vict. c. 111, and was therefore irremovable, notwithstanding the provisions of section 35 of the Divided Parishes Act, 1876.

Judgment for the respondents.

Solicitors: Whites & Co. (for Gregson & Robinson, Watton) for the appellants; Harrison & Powell (for Barton & Vores, East Dereham) for the respondents.

Queen's Bench Division. Nov. 23. } CARRUTHERS *v.* FISHER.

County Court—Interlocutory Appeal—51 & 52 Vict. c. 43, ss. 120, 122—Removal into High Court—Cause of Action—Executor—Survival of Action.

This was an appeal from the refusal of the County Court judge at Bloomsbury to make an order under Order XVII., rule 4, of the County Court Rules, 1889, that the proceedings in the action be carried on against the executors of the defendant.

The action had been brought in the High Court to recover damages for injuries sustained by the plaintiff while riding on an omnibus belonging to the defendant by the breakdown of the axletree. The action had been, by order under the County Court Act, 1867, remitted to the County Court, and at a trial with a jury a verdict had been found for the plaintiff for 50*l.* The County Court judge set that verdict aside as being contrary to the evidence, and ordered a new trial. Before the date fixed for the new trial the defendant died, and thereupon the plaintiff applied to the County Court judge for an order to continue the proceedings

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against the executors, which application was refused by the judge on the ground that the cause of action did not survive.

J. G. Witt for the plaintiff.

J. E. C. Munro, for the defendant, took the preliminary objection that this was an appeal from an interlocutory order in an action brought before January 1, 1889, and so no appeal would lie.

Witt: Under the statute 13 & 14 Vict. c. 61, s. 14, no appeal would lie except from a final judgment. But under 28 & 29 Vict. c. 99, s. 18 (the Equitable Jurisdiction Act), an appeal would lie from an interlocutory order of the County Court (*Jonas* v. *Long*, 57 Law J. Rep. Q. B. 298—C. A.). Then by the County Court Act, 1888, s. 120, 'the party aggrieved by the order of the judge may appeal;' and by section 122, 'the High Court may make a final or other order on such terms as the High Court may think proper to ensure the determination on the merits of the real questions in controversy between the parties.' This Act applies to pending actions.

LORD COLERIDGE, C.J.: We are of opinion that the appeal will lie.

Witt: On the merits the cause of action survived. The duty of the defendant arose out of a contract (*Batthyany* v. *Walford*, 56 Law J. Rep. Chanc. 881—C. A.; L. R. 36 Chanc. Div. 277).

Munro, contrà: The cause of action died with the party. The action was framed in tort, and was remitted as an action of tort under 30 & 31 Vict. c. 142, s. 10. It cannot now be treated as an action of contract.

MATHEW, J.: The Court can get over that objection by removing the action into the High Court.

The COURT (LORD COLERIDGE, C.J., and MATHEW, J.) held that the action survived; that the County Court judge was wrong in refusing to make the order asked; and made the order, and further ordered that the action be removed into the High Court, and that the costs of the appeal be costs in the cause.

Appeal allowed.

Solicitors: Adam Burn & Son for the plaintiff; Alsop & Co. for the defendant.

Probate, Divorce, and Admiralty Division. Nov. 19, 26. } BUTLER *v.* BUTLER. BUTLER *v.* BUTLER AND BURNHAM.

Divorce—Two Trials—Wife acquitted of Adultery on Alimony First Trial—Jury discharged on that Point on Second Trial—Other Issues found against Wife—Decree 'Nisi' pronounced after First Trial—Decree rescinded after Second Trial—Appeal to Court of Appeal against Rescision of Decree—Order for Continuation of Alimony 'pendente lite' pending Appeal.

November 19.—*Bargrave Deane*, for Mrs. Butler, applied to the Court *ex parte* for a direction to the divorce registry to issue a writ of *fi. fa.* for the recovery of arrears of alimony *pendente lite* payable under an order dated January 11, 1889, which had accrued due and payable since August 10, 1889.

In this case there were cross suits. On June 25, 1888, a common jury found a verdict on the wife's petition that the husband had been guilty of adultery and cruelty and acquitted the wife of all the charges against her, upon which BUTT, J., pronounced a decree *nisi* for dissolution in her favour. Subsequently the Queen's Proctor intervened, and the case was heard again in August last before BUTT, J., and a common jury, when the jury found that the husband and wife had been guilty of collusion, but were unable to agree on the subject of the wife's adultery.

Upon this BUTT, J., rescinded the decree *nisi*. Against this decision the wife appealed.

On January 11, 1889, subsequent to the Queen's Proctor's intervention, an order was made on the husband for payment of alimony *pendente lite* to the wife. The husband paid the money regularly until the decree was rescinded, when he refused to pay any longer. Hence the present application.

BUTT, J., after expressing the opinion that whether alimony *pendente lite* was payable pending appeal or not, in any case the existing order ceased with the decree, and that the application ought not to be for a *fi. fa.*, but for a fresh order for alimony pending appeal; ordered the matter to stand over in order that the husband might be served with notice of motion.

November 26.—*Bargrave Deane* moved for a fresh order for alimony *pendente lite* pending the hearing of the appeal. The wife is entitled to alimony *pendente lite*, as she has not been found to have committed adultery. On the first trial the jury found all the issues in her favour, and on the second the jury were unable to agree on the issue of adultery. He cited *Loveden* v. *Loveden*, 1 Phill. 208; *Wells* v. *Wells*, 33 Law J. Rep. Prob. & Mat. 151; *Jones* v. *Jones*, 41 Law J. Rep. Prob. & Mat. 53; 2 L. R. Prob. & Div. 333; *Dunn* v. *Dunn*, 57 Law J. Rep. P. D. & A. 58; 13 Prob. & Div. 91, *contrà*.

The husband in person.

BUTT, J., on the authority of the above cases, ordered that payment of alimony *pendente lite* be continued until further order.

Solicitors: Clinton & Buckley for the wife; the husband in person.

Probate, Divorce, and Admiralty Division. Nov. 26. } IN THE GOODS OF ANN MORRIS, DECEASED.

Administration Bond—Motion to Dispense with Sureties—Greater Part of Estate in Chancery—Justifying Security required in double the Amount passing through Administrator's hands.

This was a motion to dispense with sureties to an administration bond, or, in the alternative, that the bond should be required in the penal sum of 1,700*l.* only, that being twice the amount which would pass through the applicant's hands as administrator.

Ann Morris, the deceased, died in March, 1869, and her daughter took out letters of administration in April, 1869.

In November, 1872, the daughter was found a lunatic by inquisition, and a committee was duly appointed.

The estate of Ann Morris amounted to about 12,000*l.*; of this, over 11,000*l.* was in the control of the Chancery Division. The balance, amounting to about 850*l.*, was due on a mortgage, which was about to be paid off.

Middleton, for the administrator, moved as above.

BUTT, J., refused to dispense with the usual sureties, but ordered that they should be allowed to justify to the amount of 1,700*l.* only, the administrator's own bond to be given for the sum of 24,000*l.*, being the full value of the estate.

Order accordingly.

Solicitors: Chester & Co. for the applicant.

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Table of Cases.

COURT OF APPEAL.

Court of Appeal.
BOWEN, L.J.
FRY, L.J.
Nov. 26.

ALEXANDER v. SIMPSON.

Company — Special Resolutions — General Meeting — Notice — Companies Act, 1862, *s.* 51, *Table A, Art.* 35.

A notice, dated July 3, 1889, was issued to the shareholders of the Lisbon Berlyn Gold Fields (Lim.), that an extraordinary general meeting of the company would be held at a certain specified time and place 'for the purpose of considering, and if deemed advisable, of passing certain subjoined resolutions' (being resolutions for effecting a reconstruction of the company and a sale of the property of the old company to the new company under the provision of section 161 of the Companies Act, 1862). The notice proceeded: 'Should such resolutions be duly passed, the same will be submitted for confirmation as special resolutions to a subsequent extraordinary general meeting of the company, which will be held on Monday, July 29, 1889, at the same time and place.'

The regulation of the company as to the notice to be given of any general meeting was in the same terms as Art. 35 of Table A.

Rigby, Q.C., and *Prior*; *Romer, Q.C.*, and *Bramwell Davis* appeared as counsel.

Their LORDSHIPS held (affirming the decision of CHITTY, J.) that the notice of the second meeting was on the true construction of the words used—notice of a conditional meeting to be held if the resolutions were passed at the first meeting, and was accordingly not such a notice of such meeting as was required by section 51 of the Companies Act, 1862.

Solicitors: Powell & Burt for the appellant; Snell, Son & Greenip for the respondent.

Court of Appeal.
LORD ESHER, M.R.
LINDLEY, L.J.
LOPES, L.J.
Nov. 27.

THE ATTORNEY-GENERAL v. EMERSON AND OTHERS.

Practice—Appeal—Stay of Proceedings—Discretion of Court—Personal Undertaking of Solicitors to return Costs in the Event of Appeal succeeding—Order LVIII., r. 16.

The discretion of the Court under Order LVIII., r. 16, to order or refuse a stay of proceedings in cases of appeals is not, and cannot be, limited by any practice; as, for instance, that proceedings will be stayed unless the solicitor for the respondent gives his personal undertaking to return the costs in the event of the appeal succeeding. The discretion of the Court is absolute, and will be exercised according to the particular circumstances of each case.

The Attorney-General and *Ingle Joyce* for the plaintiff.

Stuart Moore for the defendants.

Solicitors: Solicitor to the Commissioners of Woods and Forests for the plaintiff; F. E. Goodhart for the defendants.

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Court of Appeal.
COTTON, L.J.
BOWEN, L.J.
FRY, L.J.
Dec. 2.
In re ARMFIELD.

Lunacy—Practice—Jurisdiction—Petition—Transfer of Fund in Court exceeding 1,000*l.*—*Lunacy Regulation Acts,* 1862 *and* 1882—*Order LV., r.* 2—*Lunacy Orders,* 1883, *r.* 17.

Thomas Armfield was found to be a person of unsound mind in the manner required by the Lunacy Regulation Act, 1862, and his property did not exceed 2,000*l.*, and the income of that property did not exceed 100*l.*

This was a petition presented in lunacy and in the Chancery Division praying that a sum of 1,035*l.* 3*s.* 9*d.* New Consols and a further sum of cash in Court in the Chancery Division to the credit of '*In re The Trusts of the Will of John Armfield,* deceased, applicable to the residuary estate bequeathed to Thomas Armfield,' which represented a sum of 1,002*l.* 3*s.* 11*d.* paid into Court under the Trustee Relief Act, might be transferred to the credit of Thomas Armfield and the Lunacy Regulation Act, 1862. The only question was whether the application ought to be made by petition or in open Court, or to their lordships out of Court.

By the Lunacy Orders, 1883, it is provided (17) that, 'all matters not opposed which require to be brought before the judge other than petitions under the Trustee Acts, 1850 and 1852, shall be brought before the judge out of Court. But the judge may order any such matter to be adjourned into Court or (if he shall think it necessary) to be brought before him on petition.'

The lunacy officials considered that, by virtue of this order and the Lunacy Regulations Acts, 1862 and 1882, the matter could be dealt with by the judge in private.

After some discussion the petition was submitted to Bowen, L.J., who directed it to be set down for hearing in open Court in order to have the practice settled.

A. L. Ellis for the petition.

Their LORDSHIPS held that, as they only had power to make the order prayed for by virtue of their jurisdiction in Chancery and the sum in Court exceeded 1,000*l.*, it was right that the petition should be set down for hearing in Court.

Solicitors: Byrne & Lucas (agents for Mair & Blunt, Macclesfield).

Court of Appeal.
COTTON, L.J.
BOWEN, L.J.
FRY, L.J.
Dec. 4.
THOMSON, KNT. *v.* HUGHES AND OTHERS.

Practice—Appeal from Chambers—Points raised.

On an appeal direct to the Court of Appeal from a decision of a judge in chambers, the judge having given a certificate that he does not require to have the case further argued, the Court will not consider points which were not seriously argued before the judge. The certificate refers to the points only which were seriously argued before the judge.

Decision of North, J., affirmed.

Moulton, Q.C., and *Chadwyck-Healey* for the appellant.

Bousfield for respondent.

Solicitors: Hillearys for appellant; Faithfull & Owen for respondent.

HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
Nov. 30.
Dec. 2.
In re THE BRISTOL ATHENÆUM.

Company—Winding-up—Literary and Scientific Association—Unregistered Company—Companies Act, 1862, *s.* 199—*Literary and Scientific Institutions Act,* 1854, *ss.* 30, 33.

Petition.

An unregistered society established for purely literary and scientific purposes, and not for gain, does not come within section 199 of the Companies Act, 1862, and cannot be wound up by the Court. In case of the dissolution of such an association its surplus funds ought, under section 33 of the Literary and Scientific Institutions Act, 1854, to be handed over to some other association of a similar character.

E. Ford for the petition.

A. G. Ford for the society.

Solicitors: J. J. Harlow for J. H. King, Bristol; Robinson, Preston & Stow for Jacques, Pease & Jacques, Bristol.

Chancery Division.
KAY, J.
Dec. 2.
WESTRUP *v.* THE GREAT YARMOUTH STEAM CARRYING COMPANY (LIM.).

Towage—Maritime Lien.

Adjourned summons.

This was a claim carried in in the winding up of the defendant company for a declaration that the applicants were entitled to a maritime lien in certain vessels of the company for towage services. It was admitted that the services in question were not in the nature of salvage, but were rendered only for the purpose of accelerating the speed of the vessels in going in and out of harbour.

Gorell Barnes, Q.C., and *Pyke* for the applicants.

Horton Smith, Q.C., and *Alexander* for the official liquidator.

Pyke in reply.

KAY, J., held that towage services were not the subject of a maritime lien, and refused the application.

Solicitors: Ingledew, Ince & Colt (agents for Chamberlain & Leech, Yarmouth) for the applicants; H. Montague for the official liquidator.

Chancery Division.
NORTH, J.
Nov. 28.
FRANCIS *v.* HARRISON.

Practice—Parties—Foreclosure Action—Trustees—'Cestuis que Trust'—Rules of Court, 1883, *Order XVI., rule* 8.

Motion for judgment.

This was a foreclosure action, which now came on as a short cause on motion for judgment in default of pleading.

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The plaintiffs were first mortgagees; the defendant Harrison was the mortgagor; the other defendants were Sankey, a second mortgagee, and his trustee in bankruptcy.

Sankey was trustee of the money, secured by his mortgage, for various persons. He had not entered an appearance to the writ.

The other defendants had appeared, but had not delivered any defence.

Higgins, Q.C., and *Fossett Lock*, for the plaintiff, submitted that Sankey as trustee sufficiently represented his *cestuis que trust*, and that they were not necessary parties (Order XVI., rule 8).

None of the defendants appeared.

NORTH, J., held that the *cestuis que trust* were necessary parties. A foreclosure action was entirely different from a redemption action. In the former the defendant would have to provide money to redeem the mortgage; and it would not be supposed that a bankrupt trustee would be able to find the money. The point was exactly covered by the observations of the Court of Appeal in *Mills* v. *Jennings*, 49 Law J. Rep. Chanc. 209; L. R. 13 Chanc. Div. 639.

Solicitor: H. A. Dowse.

Chancery Division. NORTH, J. Nov. 23. } EMERIS *v.* WOODWARD.

Practice—Summons—Summons to Set Aside Compromise—New Action.

This was an action, brought against an executor, claiming that he should transfer to the plaintiff three mortgages in pursuance of an alleged agreement. In August, 1887, an agreement was entered into between the plaintiff and the defendant to compromise the action upon certain terms.

This was a summons, taken out by the plaintiff, asking for leave to set aside the agreement for compromise.

Cozens-Hardy, Q.C., and *Eyre* for the plaintiff.

Higgins, Q.C., and *T. L. Wilkinson*, for the defendant, took the preliminary objection that the compromise could not be set aside upon a summons in the action, but that the plaintiff's claim must be the subject of a new action (*Gilbert* v. *Endean*, L. R. 9 Chanc. Div. 266).

NORTH, J., held that the objection was fatal, and dismissed the summons, with costs.

Solicitors: G. L. P. Eyre & Co. for the summons; Long & Gardiner for the defendant.

Chancery Division. STIRLING, J. Nov. 12, 16. } *In re* DEVENISH. DEVENISH *v.* HOPPUS.

Will—Construction—Lapse.

The testatrix by her will, dated July 24, 1844, gave her estate, subject to the payment of her debts, legacies, and funeral and testamentary expenses, to two trustees, and declared that they and the survivor of them, his executors and administrators, should stand possessed of the clear residue of her trust, estate, moneys, and premises upon trust, to pay and apply the interest, dividends, and annual proceeds thereof when and as the same should become due, and payable unto her sister Sarah during the term of her natural life, if she should so long continue unmarried, to and for her sole use and benefit, and from and immediately after her decease or marriage, whichever should first happen, then the said trust moneys and premises, and the stocks, funds, and securities for the same, together with the unapplied interest, dividends, and proceeds thereof, should be held upon trust for her brothers M. D. and J. A. D. and her sister S., the wife of the Rev. J. S. P., M. the wife of the Rev. J. H., and A. D., and their several and respective executors, administrators, and assigns equally, to be divided between and amongst them her said brothers and sisters, as tenants in common, and not as joint tenants, and in the event of the death of either of them the said M. D., J. A. D., S. P., M. H., and A. D., in the lifetime of her said sister Sarah, she declared that the portion or share of him, her, or them so dying should vest in or belong to his, her, or their executors, administrators, or assigns, and be an interest transmissible by his, her, or their last will and testament. The testatrix died on July 16, 1855, and S. D. died on November 1, 1888. M. H. died on July 20, 1853, leaving a son who had since died, leaving a widow and a daughter.

This was an adjourned summons taken out for the purpose of determining the question whether the share given to M. H. lapsed.

Buckley, Q.C., and *Vernon R. Smith* for the summons.

Graham Hastings, Q.C., and *Gregory*, and *S. B. L. Druce* for other parties.

STIRLING, J., held, upon the authority of *Bone* v. *Cook*, M'Clel. 168, and *Corbyn* v. *French*, 4. Ves. 418, that the gift failed. According to those cases, in order to avoid a lapse there must be a clear and unequivocal expression of intention to that effect on the part of the testator. Here there was nothing in the will to show such intention, and the gift must be held to have lapsed.

Solicitors: Peacock & Goddard: Nicholas Hanhart.

Queen's Bench Division. Nov. 29. } VALENTINE *v.* CANALI.

Infant—Void Contract—Right to Recover Moneys paid under—Infants Relief Act, 1874 (37 & 38 *Vict. c.* 62), *s.* 1.

Appeal from the Woolwich County Court.

The plaintiff, an infant under twenty-one years of age, on August 15, 1888, entered into an agreement with the defendant to lease from him a restaurant at Woolwich at the yearly rent of 35*l.*, and to purchase the fixtures and furniture of the shop, according to a list of prices annexed to the agreement, amounting in the whole to 102*l.* The plaintiff, in pursuance of the agreement, paid to the defendant 64*l.* in cash, and gave his promissory note for the balance of the purchase-money. The plaintiff then entered into possession under the agreement, paid rent, and remained in possession until January of the following year, when he took proceedings in the Chancery Division to have the agreement set aside and the promissory note delivered up to be cancelled and to recover the money paid by him. The action was remitted to the County Court, where the judge gave judgment in favour of the plaintiff on the first heads of his claim, but refused to make an order for the repayment of the money.

The plaintiff appealed.

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J. R. Paget for the plaintiff.
H. A. Forman for the defendant.

The COURT (LORD COLERIDGE, C.J., and BOWEN, L.J.) held that the plaintiff could not recover back the money he had paid, and said that an infant who has given consideration for something which he has consumed or used cannot, although the contract is void under section 1 of the Infants Relief Act, 1874, recover back that consideration.

Appeal dismissed.

Solicitors: A. P. Jackson for the plaintiff; A. W. Stone for the defendant.

Queen's Bench Division. Nov. 30. } REGINA *v.* BARNARDO.

Habeas Corpus—Issue of Writ—Inability to comply with Writ.

Rule *nisi* for a writ of *habeas corpus*.

A child of eleven years of age was placed, on September 25, 1888, under the charge of Dr. Barnardo, who afterwards obtained the mother's consent to his being kept at Dr. Barnardo's Home. On November 16 of the same year Dr. Barnardo handed over the child to the custody of a person who took him out of the jurisdiction, and of whose residence Dr. Barnardo was, and remained, ignorant. In March, 1889, application was made on behalf of the mother to Mathew, J., for a writ of *habeas corpus* for the production of the child, but was refused. A rule *nisi* having been obtained from the Court,

Cock, Q.C., and *Baker* for Dr. Barnardo showed cause.

Joseph Walton and *Lankester* in support of the rule.

The COURT (LORD COLERIDGE, C.J., and BOWEN, L.J.) said that Dr. Barnardo had wrongfully handed over the child to another person; that his inability to comply with the writ had been held in *Regina* v. *Barnardo*, 58 Law J. Rep. Q. B. 553; L. R. 23 Q. B. Div. 305, by the Court of Appeal to be no sufficient return to a writ of *habeas corpus* when issued; and that such fact was no answer to an application for the issue of the writ.

Rule absolute.

Solicitors: Leathley & Phipson for the applicant; Nisbet & Daw for Dr. Barnardo.

Probate, Divorce, and Admiralty Division. Nov. 26. } IN THE GOODS OF AMELIA CLARK, DECEASED.

Administration — Presumption of Death — Leave to presume Death of Husband of a Deceased Intestate refused.

Amelia Clark, late of Leeds, in the county of York, died on March 14, 1889, at Leeds, without issue or parent, leaving Mary H. Jackson, spinster, of Leeds aforesaid, her natural and lawful sister and one of her next-of-kin. The said Amelia Clark was married, in 1863, at Christ Church, Demerara, to Joseph Marshall Clark, an engineer of the Demerara Railway Company. After cohabiting together at various places he, in 1870, went to Chili, while she remained in England. In July, 1873, she lost all trace of him, and had never afterwards seen or heard of or from him.

Bargrave Deane now moved for a grant of administration to the personal estate and effects of Amelia Clark to Mary H. Jackson, and for leave to presume the death of Joseph Marshall Clark in or about the month of July, 1873, in order that the applicant might be in a position to swear that the said Amelia Clark died a widow. The learned counsel added that the usual practice had been to cite the husband by advertisement.

BUTT, J.: It is, to my mind, quite a novel application to presume the death of a person other than the person whose estate is in question. If the applicant can honestly swear that her sister died a widow she is entitled to the grant as next-of-kin; if not, the usual practice must be followed.

Motion refused.

Solicitors for the applicant: Smiles, Benyon & Ollard.

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HOUSE OF LORDS.

House of Lords. May 2, 3, 13. Dec. 9. } THE MIDLAND RAILWAY COMPANY AND OTHERS v. F. L. ROBINSON.

Railway—Mines and Minerals under and near Railway—Ironstone—Open Quarrying—Notice by Landowner of Intention to Work—Railway Clauses Consolidation Act, 1845 (8 & 9 *Vict. c.* 20), *ss.* 6, 77, 78, 79, 80.

This was an appeal from a decision of the Court of Appeal, which affirmed one of CHITTY, J. The proceedings in the Courts below are reported 57 Law J. Rep. Chanc. 441.

Rigby, Q.C., and *Sir A. Watson, Q.C.* (*W. P. Beale, Q.C.*, and *W. Baker* with them) for the appellants.

Sir H. Davey, Q.C., and *Romer, Q.C.* (*P. Gye* and *Wm. Radcliffe* with them) for the respondent.

Cur. adv. vult.

Their LORDSHIPS (LORD WATSON and LORD HERSCHELL, *dissentiente* LORD MACNAGHTEN) dismissed the appeal, with costs.

Solicitors: Beale & Co. for the appellants; Capel Cure & Ball for the respondent.

COURT OF APPEAL.

Court of Appeal. COTTON, L.J. BOWEN, L.J. FRY, L.J. Dec. 7, 9, 10. } TOMLINE v. LUCE.

Mortgagor and Mortgagee—Exercise of Power of Sale—Misdescription — Compensation to Purchaser — Liability for Error.

Appeal by the defendants from the judgment of KEKEWICH, J. The case is noted *ante*, p. 55.

Warmington, Q.C., and *G. Harris Lea* for the appellants.

Neville, Q.C., and *Charles Browne* for the respondents.

Their LORDSHIPS reversed the decision of Kekewich, J., so far as it purported to lay down that the amount allowed by the first mortgagees to the purchaser out of the purchase-money was necessarily the measure of compensation to be allowed as between the first mortgagees and the owners of the equity of redemption, and directed an inquiry whether the property sold would have sold for any and (if any) what sum in excess of 19,905*l.*, being the sum of 20,800*l.* (the original purchase-money), less 895*l.* (the amount allowed) in case the same premises had been sold without the mistake in the particulars of sale, with certain consequential accounts and inquiries.

Solicitors: Lane, Monro & Soutter, for appellants; F. J. Thurlwall for plaintiffs.

HIGH COURT OF JUSTICE.

Chancery Division. KAY, J. Dec. 4. } *In re* FROST. FROST v. FROST.

Contingent Remainder—Remoteness.

Testator by will, dated March 19, 1870, devised freehold land to the use of trustees and their heirs during the life of his daughter, in trust for his daughter for her separate use, and after her death to the use of any husband she might thereafter marry, and after the death of the survivor of his daughter and her husband, to the use of the children of his daughter as she should appoint, and in default of appointment, to the use of the children of his daughter who should be living at the death of the survivor of his daughter and her husband, or who should be previously dead leaving issue then living, their heirs and assigns, in equal shares, as tenants in common, but if there should be no such child, then to the use of such of his sons or other

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daughters as should be then living or should have previously died leaving issue then living, their heirs and assigns, as tenants in common. The will contained a residuary devise. The daughter survived the testator, and after his death married Robert Tyler, and died without issue in 1872. Robert Tyler was also since dead.

This was an originating summons raising (amongst other things) the question of the validity of the limitations after the death of the survivor of the daughter and her husband.

Badcock, for the plaintiff, who was interested under the residuary devise, contended that the limitation to the daughter's children in default of appointment was void for remoteness, as the daughter might have married a person unborn at the testator's death, and that that limitation being void the limitation over was void also.

Rowden for persons in the same interest.

W. J. Lee, for the donees over, contended that the rule against perpetuities did not apply to a legal remainder, and that the limitation to the children was therefore valid, and did not invalidate the gift over.

KAY, J., held that the limitations in default of appointment after the death of the survivor of the daughter and her husband were void for remoteness, and that the lands fell into the residue, and were disposed of accordingly.

Solicitors: H. Quekett Louch (agent for Louch & Son, Longport); Prideaux & Sons.

Chancery Division.
CHITTY, J.
Dec. 4.
} PRATT *v.* JUMAN.

Sequestration to Enforce—Payment into Court—Order for Sale under—Death of Debtor Insolvent before Sale—Effect of Order in Administration of Debtor's Estate—Judicature Act, 1875, *s.* 10—*Bankruptcy Act*, 1883, *s.* 45.

An action was brought by *cestuis que trust* against a trustee in respect of breach of trust, in which an order was made directing the defendant to pay a sum of money into Court. He failed to obey this order, whereupon a writ of sequestration was issued against his estate and effects, and subsequently an order was made giving the sequestrators liberty to sell certain chattels under their control belonging to the defendant. By arrangement this order was not acted on. The defendant died, and a creditor's action was brought for the administration of his estate, in which a receiver was appointed. He and the administrator of the deceased now brought this action against the sequestrators to restrain the sale being proceeded with. The statement of claim alleged that the deceased's estate was insolvent.

Byrne, Q.C., and *Dibdin*, for the plaintiffs, contended that sequestration, being a process in contempt, did not create a debt nor give any charge on the contemnor's assets in priority to general creditors; and that, as section 10 of the Judicature Act, 1875, imported into the administration of an insolvent estate the bankruptcy rules as to secured and unsecured creditors, the sequestration, not having been completed by sale, was avoided by the Bankruptcy Act, 1883, s. 45, subs. 2.

Romer, Q.C., and *Clydesdale* for the sequestrators.

CHITTY, J., held that the cases established that, where sequestration issued to compel the performance of a duty, it did not come to an end on the death of the defendant (*Hyde* v. *Greenhill*, 1 Dick. 106, and the cases collected at 3 Swanst. 276). It could, therefore, be continued against his representatives. And he held, on the authority of *In re The Withernsea Brickworks*, 50 Law J. Rep. Chanc. 185; L. R. 16 Chanc. Div. 337, that section 10 of the Judicature Act, 1875, did not import into the administration of insolvent estates the provisions of section 45 of the Bankruptcy Act, 1883.

Action dismissed.

Solicitors: R. J. Witty; Coode, Kingdon & Cotton, for E. F. Chamier (Stratton).

Chancery Division.
NORTH, J.
Dec. 7.
} *Re* WELLS. WELLS *v.* WELLS.

Infant—Past Maintenance—Life Interests—Conveyancing and Law of Property Act, 1881, *s.* 43, *subs.* 2—*Two Funds.*

This was a summons by the trustees of the will of one Michael Wells for the determination (amongst others) of the following questions: (1) Whether the defendant Rose Wells was entitled to the whole of the accumulations arising during her minority (*a*) from a fund to which she was entitled during her life, contingently upon her attaining twenty-one, as to which the will contained an express power to apply for maintenance, and (*b*) from a second fund to which she was absolutely entitled during her life; and (2) in what manner the payments, which had been made for past maintenance, ought to be apportioned between the income of the two funds.

In July, 1886, an order was made that a sum of 200*l.* a year should be allowed for the maintenance of Rose Wells, and that the trustees of the will should pay, on account of such maintenance, a certain sum 'out of the funds, subject to the trusts declared by the will.'

In May, 1889, Rose Wells attained twenty-one.

As to the accumulations, no distinction had been made by the trustees between the income arising from the two funds, but such accumulations had been blended together.

There was evidence that the income arising from the first fund was less than the annual sum ordered to be allowed for maintenance.

There was an affidavit by the trustees that they had not exercised any discretion in the matter.

Rolt for the trustees.

F. H. Colt for Rose Wells.

Marcy for remaindermen.

NORTH, J., held that Rose Wells was absolutely entitled to the accumulations of income which had arisen from the second fund; that past maintenance was primarily payable out of the first fund, that being most for the benefit of the infant; and that, as the trustees had not exercised any discretion in the matter, the Court could exercise it for them, upon an application made after the infant had attained twenty-one.

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Chancery Division. Stirling, J. Dec. 7. } *In re* Barnett's Estate. Foster *v.* Barnett.

Trustee Act—Vesting Order—Infants—Stock standing in Names of Infants and Trustees—Trustee Extension Act, 1852 (15 & 16 *Vict. c.* 55).

The testator, who died in February, 1888, by his will made in January, 1888, gave to each of his eight grandchildren, the children of his son and daughter, the sum of 1,000*l.*, to be paid to them at twenty-one years of age respectively, the legacies to be invested in the names of his trustees, and the interest to be applied towards the maintenance and support of each grandchild entitled thereto. At the death of the testator there were four children of each son and daughter—all infants. The trustees invested the four legacies to the daughter's children in the purchase of New Consolidated Stock in the names of themselves and of each infant petitioner entitled thereto. The trustees received the dividends on the four legacies up to July 5, and invested them in the same stock in the names of themselves and each child entitled thereto.

The four children of the testator's daughter, by their next friend, commenced an action by originating summons for the purpose of obtaining a transfer of the legacies and dividends into Court, and having the same carried over to separate accounts of the infants respectively. In November, 1889, an order was made directing the trustees to transfer the several sums of stock into Court; but, in consequence of the investments being in the names of the infants respectively jointly with the trustees, the order made in November, 1889, could not be drawn up.

This was a petition asking for an order, under section 3 of 15 & 16 Vict. c. 55, vesting the right to transfer the several sums of stock and to receive the dividends in the trustees alone, for the purpose of enabling them to transfer the same into Court. The petition also asked that, by the same order, the sums of stock should be transferred and carried over to the separate accounts of the infants.

D. L. Alexander, for the petitioners and trustees, referred to *In re Harwood*, 51 Law J. Rep. Chanc. 578; L. R. 20 Chanc. Div. 536; and *In re Findlay*, 55 Law J. Rep. Chanc. 295; L. R. 32 Chanc. Div. 221, and 641 (2).

Stirling, J., said that he should follow the decision of Hall, V.C., in *In re Harwood*, and made the order.

Solicitors: Lewis & Sons.

Queen's Bench Division. Dec. 3. } Regina *v.* Fitzroy Cowper.

Practice—Costs—County Court Particulars of Plaint—Lithographed Endorsement of Solicitor's Name—County Court Rules, 1889, *Order VI., rule* 10, *and schedule.*

A plaintiff in a County Court issued a summons by his solicitor in an action for debt, the particulars endorsed thereon being 2*l.* 16*s.* 5*d.* debt, 4*s.* Court fees, and 4*s.* solicitor's costs.

The name and address of the solicitor were lithographed on the particulars, which were not otherwise signed by the solicitor. The summons was heard by the registrar, when it appeared that the defendant had on the day preceding the hearing paid into Court 3*l.* 0*s.* 5*d.* The plaintiff's solicitor therefore applied for an order for payment of the balance which the registrar held to be the amount claimed in respect of the solicitor's costs, and refused to make the order on the ground that, the particulars not being signed, these costs could not be recovered, and referred the matter to the judge. The case was heard by the deputy-judge, who upheld the decision of the registrar, and the summons was struck out. The plaintiff thereupon obtained a rule calling upon the deputy-judge to show cause why he should not hear and determine the matter.

By Order VI., rule 10, of the County Court Rules, 1889, the solicitor must 'endorse' on the particulars his name, &c., otherwise the costs of entering the plaint shall not be allowed; and, in the scale of costs set out in the schedule, costs are only allowed where the particulars are signed by the solicitor.

Jelf, Q.C., and *Mackenzie* for the respondent.

Crump, Q.C., and *Lewis Thomas* for the plaintiff in the action.

The Court (Lord Coleridge, C.J., and Mathew, J.) held that the order and the schedule together provided that the particulars should be signed by the solicitor, otherwise the costs should not be allowed, and that a lithographed endorsement was not a signature within that provision; and that, therefore, the decision of the deputy County Court judge was right, and the plaintiff was not entitled to recover.

Rule discharged.

Solicitors: Aird & Hood for the plaintiff in the action; Carter & Simpson for the respondent.

Queen's Bench Division. (*Magistrates' Case.*) Dec. 5. } Starchy *v.* The Chilworth Gunpowder Company (Lim.).

Merchandise Marks Act, 1887 (50 & 51 *Vict. c.* 28), *s.* 1, *subs.* 2—*False Trade Description—Meaning of 'Intent to Defraud.'*

This was an appeal by means of a special case from the decision of justices, who had refused to convict the respondents upon the facts hereinafter stated.

The respondents were summoned for unlawfully supplying a false trade description to gunpowder contrary to 50 & 51 Vict. c. 28, s. 2. It was proved before the justices that the respondents, who were English manufacturers of gunpowder having mills at Chilworth, entered into a contract with the Government for the supply at certain dates of 5,000 barrels of gunpowder of a description known as 'R.L.G. 4.' There was no stipulation in the contract that the gunpowder should be of English manufacture, though at the time of making the contract the respondents had intended to manufacture it. Owing, however, to two explosions at their works, the respondents, in order to complete the contract at the stipulated time, were compelled to import 'R.L.G. 4' gunpowder equal in quality from Germany, which was placed in barrels, the words 'Chilworth Gunpowder Company (Lim.)' being inserted on the label in the place where the name of the manufacturer is required by the Government to be inserted; and there being no indication upon the label that the gunpowder was of German manufacture.

The question was whether upon the above facts the justices should have convicted under section 2, subsection 1, of the Trade-marks Act, which enacts that 'every person who falsely applies to goods any trademark . . . or any false trade description to goods . . .

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shall . . . unless he proves that he acted without intent to defraud . . . be guilty of an offence.'

The justices dismissed the information.

The prosecutors appealed.

Moulton, Q.C., and *M'Kenna*, for the appellants, argued that there had been a false description as to the place of manufacture, and that the respondents ought to have been convicted, even though they did not intend to cheat in a primary sense.

Poland, Q.C., and *R. S. Wright*, for the respondents, contended that, as there was no stipulation in the contract that the powder was of English manufacture, and there had clearly been no intent to defraud in the ordinary sense of the term, no offence had been committed.

The COURT (LORD COLERIDGE, C.J., and MATHEW, J.) held, upon the above facts, that the respondents ought to have been convicted of having used a false trade description, and that misled the purchasers into accepting goods which otherwise they might not have accepted, which was the sense in which the words 'intent to defraud' were used in 50 & 51 Vict. c. 28.

Case remitted.

Solicitors: M'Kenna & Co. for the appellants; Bircham & Co. for the respondents.

Queen's Bench Division. Dec. 6. } PROUT *v.* GREGORY. SHARPE (GARNISHEE).

Practice—Attachment of Debts—Administration in Bankruptcy—Dividend Payable to Judgment Debtor—Order XLV., rule 1—*Bankruptcy Act*, 1883 (46 & 47 *Vict. c.* 52), *ss.* 63, 125.

Appeal from chambers.

The plaintiff having recovered a judgment against the defendant in the High Court, obtained a garnishee order *nisi* against Sharpe, the official receiver for Birmingham, acting as trustee in the administration of the estate of a deceased person under section 125 of the Bankruptcy Act, 1883. The judgment debtor was a creditor in the administration, and it was sought to attach the dividend to which he was entitled under it. A Master having discharged the garnishee order, GRANTHAM, J., referred the matter to the Court.

P. Gye, for the judgment creditor, contended that the dividend to which the judgment debtor was entitled was a 'debt' which was attachable under Order XLV., rule 1.

M. Muir Mackenzie, for the official receiver, was not called upon to argue.

The COURT (LORD COLERIDGE, C.J., and MATHEW, J.) held that the dividend in question was not a 'debt' within the meaning of Order XLV., rule 1, and was not liable to attachment.

Appeal dismissed.

Solicitors: J. & C. Robinson & Wilkin (for Goodyear, Burton-on-Trent), for the judgment creditor; Solicitor to the Board of Trade for the official receiver.

Queen's Bench Division. (Magistrates' Case.) Dec. 10. } HICKMAN (APPELLANT) *v.* BIRCH (RESPONDENT).

Revenue—Excise—Hackney Carriage License—Omnibus—Standing or Plying for Hire—Customs and Inland Revenue Act, 1888 (51 *Vict. c.* 8), *s.* 4, *subs.* 3.

This was a case stated by one of the metropolitan magistrates who had dismissed an information against the respondent, charging him with keeping a carriage having four wheels, adapted to be drawn by two horses, not being a hackney carriage within the Customs and Inland Revenue Act, 1888, without a proper license.

The facts proved were that the vehicle was an omnibus plying in the ordinary way for the conveyance of passengers for payment; that each passenger was charged a separate and distinct fare for his seat, which fares varied according to where the passenger was taken up; that the respondent had not in force any excise license at the 2*l.* 2*s.* rate authorising him to keep a carriage, but had in force an excise license at 15*s.* authorising him to keep a hackney carriage.

The appellant contended that a 2*l.* 2*s.* license was necessary, since the expression 'standing or plying for hire' in subsection 3 of section 4 of the Act of 1888 was applicable only to cabs, and had no reference to an omnibus which plied for the conveyance of passengers at separate fares on a fixed route. The question for the opinion of the Court was, whether the definition of a 'hackney carriage' in subsection 3 of section 4 included the respondent's omnibus.

The Solicitor-General (*Sir E. Clarke, Q.C.*), *R. S. Wright*, and *Knox* for the appellant.

Channell, Q.C., and *H. Courthorpe Munroe*, for the respondent, were not called upon.

The COURT (LORD COLERIDGE, C.J., and MATHEW, J.) held that an omnibus clearly plied for hire, and was a hackney carriage within the meaning of subsection 3, section 4. The magistrate was right; the 15*s.* license was sufficient, and the appeal must be dismissed.

Appeal dismissed.

Solicitors to the Inland Revenue and Close & Co.

Queen's Bench Division. Dec. 10. } REGINA *v.* HOLT (VICE-REGISTRAR OF OFFICE OF LAND REGISTRY).

Land—Charges on—Sums expended by Local Authority—Registration—Public Health Act, 1875 (38 & 39 *Vict. c.* 55), s. 257—*Lands Charges, Registration, and Searches Act*, 1888 (51 & 52 *Vict. c.* 51).

This was a rule *nisi* for a *mandamus* to the vice-registrar of the land registry, calling upon him to register, under the Lands Charges, Registration, and Searches Act, 1888, two charges upon land in the borough of Nottingham for sums expended by the corporation as the local authority, by virtue of section 257 of the Public Health Act, 1875, in doing certain work required. One charge was dated before and the other subsequently to the Act of 1888. The question was whether these were charges within the meaning of that Act.

The Attorney-General (*Sir R. Webster*), *Q.C.*, and *Griffin* showed cause.

R. S. Wright in support.

The COURT (LORD COLERIDGE, C.J., and MATHEW, J.) held that such charges as these did not require registration, and that the rule must be discharged.

Rule discharged.

Solicitors: The Solicitor to the Treasury; Sharpe, Parkers & Co.

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COURT OF APPEAL.

Court of Appeal.
COTTON, L.J.
BOWEN, L.J.
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Dec. 1.
} STUART *v.* DIPLOCK BROTHERS.

Covenant not to Carry on Particular Business—Sale of some Articles comprised therein—Overlapping Business.

The sale by a hosier in the ordinary course of his business of certain articles sold by a ladies' outfitter is not a breach of a covenant not to carry on the business of a ladies' outfitter, even if the articles sold form a substantial part of the business of a ladies' outfitter.

Decision of KEKEWICH, J., *reversed.*

Everitt, Q.C., and *Dauney* for appellant.

Chadwyck-Healey (*Warmington, Q.C.*, with him) for respondent.

Solicitors: Edward Chester for appellant; Sole, Turner & Kinghorn (agents for W. E. Cripps & Son, Tunbridge Wells) for respondent.

Court of Appeal.
COTTON, L.J.
BOWEN, L.J.
FRY, L.J.
Dec. 18.
} GRAY *v.* SMITH.

Specific Performance—Partnership—Agreement to Retire—Interest in Land—Informal Agreement—Statute of Frauds—Right to use Name of Retiring Partner.

Cross appeals by defendant Bennett and plaintiff from a decision of KEKEWICH, J., reported 58 Law J. Rep. Chanc. 808.

Henry Terrell for defendant Bennett.

Montague Crackanthorpe, Q.C., and *Upjohn* for plaintiff.

G. Curtis Price for defendant Smith.

Their LORDSHIPS dismissed both appeals.

Solicitors: Torr, Janeways, Gribble & Oddie (agents for Dibbs & Clegg, Barnsley) for plaintiff; Pilgrim & Phillips (agents for Smith, Smith & Co., Sheffield) for defendant Smith; Indermaur & Brown (agents for F. W. Fisher, Doncaster) for defendant Bennett.

Court of Appeal.
COTTON, L.J.
BOWEN, L.J.
FRY, L.J.
Dec. 16.
} MYERS *v.* CATTERSON.

Light—Injunction—Implied Grant.

Appeal from a decision of KEKEWICH, J.

In 1863 the London, Chatham and Dover Company sold to the plaintiff a piece of land on which he built a house, which he used as a shop and dwelling-house. The sale was carried into effect by a conveyance executed after the house was built, which recited that the company required all the land other than that sold to the plaintiff for the purpose of constructing their railway. It contained no stipulation as to light. The windows in the back of the house faced the railway, which here ran over a series of brick arches, from which the house was distant about eight feet. The plaintiff's case was that from 1863 he had enjoyed access of light to the windows of this house through the openings of two of the arches. In 1870 the defendant acquired from the railway company a lease of these arches for thirty years, and in 1887 he blocked up the openings of the two arches at the end nearest to the plaintiff's house with a wooden hoarding. From 1872 the arches had been used for the storage of heavy machinery, which blocked out a portion of the light coming through them.

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The plaintiff claimed an injunction.

KEKEWICH, J., held that the company sold to the plaintiff subject to an implied obligation not to obstruct the lights of his house, and granted an injunction.

The defendant appealed.

Neville, Q.C., and *Russell Roberts* for the appellant.

Warmington, Q.C., and *Swinfen Eady* for the respondent.

Their LORDSHIPS dismissed the appeal. They held that the company were under an implied obligation not to interfere with the reasonable enjoyment by the plaintiff of the purchased premises in accordance with the purpose for which they were purchased, except so far as was necessary for the construction of the railway, and that the plaintiff had not lost his right by acquiescence.

Solicitors: Saffery, Huntley & Sons; Hicklin, Washington & Pasmore.

HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
Dec. 3.

In re WHATMAN.
HOAR *v.* WHATMAN.

Practice—Adding Parties—Summons to Vary—Bankrupt—Leave to use Trustee's Name—Rules of Court, 1883, Order XVI., rule 11; Order LV., rule 71.

Adjourned summons.

This was a summons to vary a finding in the chief clerk's certificate. When the certificate was made the applicant was bankrupt, and the official receiver, in whom his estate was vested under the Bankruptcy Act, 1883, s. 121, being unwilling to proceed further in the matter took no steps to vary the certificate, but this summons to vary was taken out before the Long Vacation by the applicant within due time. The time for taking out a summons to vary had now long since elapsed, and under these circumstances, this summons now coming on to be heard, the applicant had, in the meantime, obtained from the official receiver leave to use his name at the hearing.

Robinson, Q.C., and *Ingle Joyce*, for the applicant, asked for leave to add the official receiver as a party to the summons.

Renshaw, Q.C., and *Freeman* opposed the application.

KAY, J., was of opinion that the application was one to which the Court ought to accede on proper terms as to costs, and directed the summons to come on again if the applicant gave security for costs to the extent of 100*l.*

Solicitors: Littledale & Lefroy; Kingsford, Dorman & Co.

Chancery Division.
KAY, J.
Dec. 7.

Re HUISH. BRADSHAW *v.* HUISH.

Will—Construction—Debt—Legacy—Satisfaction.

Originating summons.

A testatrix, by her will dated 1887, bequeathed a legacy of 3,000*l.* to M. B. H. In a codicil she directed that her funeral expenses and just debts should be paid at once. In 1878, on the marriage of the said M. B. H., she executed a bond to secure to him 1,000*l.* at her death, if he should be then living, or to his executors, administrators, or assigns if he should have died leaving issue him surviving, but not otherwise, together with interest at 5 per cent. from her death. The bond was given to the said M. B. H. on his marriage, and to the knowledge of the testatrix was assigned to the trustees of his marriage settlement.

Renshaw, Q.C., and *Grosvenor Woods* and *Method* for the parties.

KAY, J., held that the bond was not satisfied by the legacy, but that both were payable.

Solicitors: F. Needham for Hamilton Urry, Ventnor; Rowcliffe, Rawle & Co.

Chancery Division.
CHITTY, J.
Dec. 5.

Re RACKHAM. CARTER *v.* RACKHAM.

Solicitor—Costs—Election to Charge not according to Scale—Creditors' Administration Action—Sale of Real Estate to satisfy Debts—To whom Notice of Election should be given—General Order under Solicitors' Remuneration Act, 1881—Rule 6.

In a creditor's administration action, the defendant being the executrix and devisee of the testator, an order was made on the application of the plaintiff—the defendant admitting that the personal estate would not satisfy the debts—giving liberty to the defendant to sell out of Court certain real estate of the testator. Her solicitors gave her notice of their election to charge for their work under schedule 2, but the taxing-master refused to so tax the bill on the ground that the notice was given too late. On a summons to review the taxation the decision was affirmed on that ground.

Swinfen Eady for the summons.

Martelli contrà.

CHITTY, J., during the argument, doubted whether in the case of an insolvent estate such a notice was sufficient, the vendor not being interested in keeping down the costs of the sale, and he referred to *In re The United Kingdom Land and Building Association*, 58 Law J. Rep. Chanc. 132. Subsequently his lordship said that his present impression was that if a solicitor intended in such a case as this to be paid under the non-scale charge he ought to apply to the Court in the matter, and he ought, at any rate, to give notice of his intention to the plaintiff in the action.

Solicitors: C. F. Martelli (for Leathes Prior, Norwich); Pollock & Co.

Chancery Division.
CHITTY, J.
Dec. 7.

In re T. DAVIES'S TRUSTS.

Practice—Appointment of New Trustees—Vesting Order—Copyholds—Infant Sole Heir of Surviving Trustee—Service—Trustee Act, 1850, ss. 7, 28.

Petition for an order vesting copyholds in new trustees. The heir of the last surviving trustee was an infant.

Street for the petitioner.

CHITTY, J., following *In re Little*, L. R. 7 Eq. 323, said that it was unnecessary to serve the heir.

Solicitors: W. W. & R. Wren.

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Chancery Division. North, J. Dec. 14. } FAITHFULL *v.* WOODLEY.

Practice — Foreclosure Action — Personal Order for Immediate Payment — Default of Appearance.

Motion for judgment.

This was a foreclosure action.

The plaintiff by his statement of claim claimed (1) an account of what was due under his mortgage; (2) payment; (3) in default of payment, foreclosure.

There was an allegation in the statement of claim that a specific sum was due to the plaintiff under his mortgage.

The action came on on motion for judgment in default of appearance.

The defendant did not appear at the hearing.

J. G. Wood, for the plaintiff, asked for an order for immediate payment on the ground that the defendant, by not putting in a defence, had admitted that the amount alleged to be due from him was in fact due. He referred to *Farrar* v. *Lacy, Hartland & Co.*, 54 Law J. Rep. Chanc. 808; L. R. 31 Chanc. Div. 42.

NORTH, J., held that, under the circumstances, the plaintiff was not entitled to an order for immediate payment.

Solicitors: Faithfull & Owen.

Chancery Division. Stirling, J. Dec. 6. } *Re* DOWSON'S SUBMISSION TO ARBITRATION.

Practice — Arbitration — Submission made a Rule of Court on 'Ex parte' Application — How Matter commenced 'Ex parte' is to be Assigned and Marked with Name of Judge.

This was an *ex parte* application to have a submission to arbitration made a rule of Court.

H. Fellows, for the applicant, referred to *Wood* v. *Birch*, *ante*, p. 82, and said that the matter not having been initiated by any document contemplated in Order V., rule 9, or in fact by any document, had not been balloted for or assigned to this branch of the Court.

STIRLING, J., made the order, subject to an inquiry, to be made by the registrar, as to what (if any) was the practice in such a case.

The practice, as subsequently ascertained from the registrar, was that the matter, being a new one, should have been balloted for, and that the officer would act upon and mark a short written statement of the nature of the application. This was subsequently done.

Solicitors: Dowson Ainslie and Martineau.

Chancery Division. Kekewich, J. Dec. 4. } *Re* METCALFE. METCALFE *v.* METCALFE.

Will — Forfeiture Clause — Repugnancy — Bankruptcy of Legatee — Absolute Interest — Limited Interests — Close of Bankruptcy — Bankruptcy Act, 1869, *s.* 81 — *Bankruptcy Act*, 1883, *s.* 35.

Under a will made in 1864, by a testator who died in February, 1884, the plaintiff became entitled to an absolute estate in certain personal property, and to a life interest in certain other property. The will provided that if by operation of law the share or interest of anyone of the class of persons, of whom the plaintiff was one, should be aliened or but for that provision vest in any other person, the trustee should hold the same for the benefit of such other person as therein referred to. The plaintiff was adjudicated bankrupt in 1882, and was an undischarged bankrupt until June, 1887, when the bankruptcy was annulled. Her claims under the will were resisted on the ground that the forfeiture clause had operated on her legacies both absolute and limited.

Warmington, Q.C., and *T. Bateman Napier* for the plaintiff.

Neville, Q C., and *Gapelee* for the defendant.

KEKEWICH, J., held that the absolute interests under the will were not affected by the forfeiture clause, which in that respect was void for repugnancy; that the clause operated against the life estate, and at the time when receipt or payment became possible in fact, although, if the plaintiff had proved that her estate was solvent at the end of one year from the testator's death, and the delay in the annulment of her bankruptcy was owing to some accidental cause, *semble* the forfeiture would not have operated. That section 81 of the Bankruptcy Act, 1869 (cf. Bankruptcy Act, 1883, s. 35), did not affect the case, inasmuch as that applies only as between the debtor and the trustee or others claiming under the bankruptcy, and does not affect the title of persons claiming by independent title.

Solicitors: Harper & Battcock; Thompson & Groom.

Queen's Bench Division. Dec. 11. } REGINA *v.* THE JUSTICES OF BROMLEY.

Weights and Measures Act, 1878 (41 & 42 *Vict. c.* 49), *ss.* 25, 59 — *Unjust Scale — Scale supplied to Tradesman for Post-office Purposes — Liability of Tradesman.*

Rule for a prohibition to certain justices of Bromley to prohibit them from proceeding to hear and determine an information against one Nicholls, charging him, under section 25 of the Weights and Measures Act, 1878, with having a false and unjust scale in his possession for use in his trade. Section 25 provides that 'every person who uses or has in his possession for use for trade any weight, measure, scale, &c., which is false or unjust shall be liable to a fine . . . and the weight, measure, scale, &c., shall be liable to be forfeited.' And by section 59, 'where any weight, measure, scale, &c., is found in the possession of any person carrying on trade within the meaning of this Act . . . such person shall be deemed for the purposes of this Act, until the contrary is proved, to have such weight, measure, scale, &c., in his possession for use for trade.' Nicholls, who was a baker, carried on post-office business in his shop, and the post-office authorities supplied him with a scale for that purpose, which was marked with the letters 'G. P. O.' An inspector of weights and measures went to Nicholls's shop, and finding the scale inaccurate, seized it, and instituted proceedings under section 25. Nicholls had no other scale in his shop except a small one, which was of no practical use.

Poland, Q.C., and *R. S. Wright*, for the justices, showed cause.

Sir R. Webster, Q.C. (*Attorney-General*) and *Casserley*, for the Postmaster-General, supported the rule.

The COURT (LORD COLERIDGE, C.J., and MATHEW, J.) held that it was clear that the provisions of the Act

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were not intended to apply to weights, measures, and scales supplied by the Post Office, and made the rule for a prohibition absolute.

Solicitors: Latter & Willett for the justices; Hunter for the Postmaster-General.

Queen's Bench Division. Dec. 12. } JONES *v.* MARSHALL.

Pawnbroker—Special Contract with Pawner—Deficit on Sale of Pledge—Right of Action—Pawnbrokers Act, 1872 (*35 & 36 Vict. c.* 93), *ss.* 22, 24.

Appeal from Liverpool County Court.

The action was brought to recover a sum of 4*l.* 3*s.* 6*d.*, the deficiency upon the realisation of a watch pledged by the defendant with the plaintiff, a pawnbroker. The parties had entered into and duly signed a special contract in conformity with section 24 of the Pawnbrokers Act and Schedule 3, Form 7. The County Court judge nonsuited the plaintiff upon the ground that he was precluded from suing for the deficit by the terms of the special contract, and the provisions of section 22 of the Pawnbrokers Act, which empowers a pawnbroker to set off a deficit upon the sale of one pledge against a surplus upon the sale of another.

Finlay, Q.C., and *Bonsey* for the plaintiff.

O'Feeley for the defendant.

The COURT (LORD COLERIDGE, C.J., and MATHEW, J.) held that there was nothing in the Act to prevent the plaintiff from resorting to his ordinary common law rights and suing for the deficiency arising upon the realisation of the pledge.

Appeal allowed.

Solicitors: J. & C. Attenborough (for Bremner & Son) for the plaintiff; Levy & Robinson for the defendant.

Queen's Bench Division. Dec. 17. } OLIVER *v.* LEWIS. MORRIS, CLAIMANT.

Practice — County Court — Interpleader — Proceedings transferred from High Court—Claim for Damages—Supreme Court of Judicature Act, 1884 (*47 & 48 Vict. c.* 61)—*County Court Rules,* 1889, *Order XXVII., rules* 4, 7, *and* 8, *and Order XXXIII., rule* 10.

Appeal from County Court.

By section 17 of the Judicature Act, 1884, power is given to transfer from the High Court to a County Court 'any proceeding by way of interpleader,' in which the value of the matter in dispute does not exceed 500*l.*, and it is provided that 'every such order shall have the same effect as if it had been for the transfer of a suit or proceeding under section 8 of the County Courts Act, 1867; and the County Court shall have jurisdiction and authority to proceed therein, as may be prescribed by any County Court rules for the time being in force.'

Order XXXIII., rule 10 of the County Court Rules, 1889, provides that a proceeding so transferred 'shall be tried in such manner and under such conditions as may be prescribed by the order directing such transfer,' and 'in the event of no directions as to the mode of trial being given in such order, such proceedings shall be tried in the same manner as prescribed by the statute and rules applying to the trial of proceedings in the County Courts,' but reserves leave to the sheriff or any of the parties to apply for special directions as to the mode of trial.

Order XXVII., rule 7, of the County Court Rules, 1889, provides that where the claimant claims damages from the execution creditor or from the high bailiff in respect of the seizure of the goods, he shall, in the particulars of his claim, state the amount he claims for damages, and the grounds on which he claims them.

Interpleader proceedings commenced in the High Court on the application of the sheriff of London were transferred, under section 17 of the Judicature Act, 1884, to the Clerkenwell County Court, but no directions as to the mode of trial were given in the order. After the transfer the claimant, in his particulars of claim delivered under Order XXVII., rule 4, gave notice that she claimed the sum of 100*l.* from the execution creditor and the sheriff for damages arising out of the execution. The County Court judge having entered judgment for the claimant for 100*l.* damages, the execution creditor appealed.

Winch, Q.C. (with him *Beaumont Morice*), for the execution creditor: The County Court judge had no jurisdiction to adjudicate upon the claim for damages. The proceeding transferred was the issue as to the right to the goods taken in execution, and there was no power to add to it a claim for damages.

Henn Collins, Q.C. (with him *Morton Smith*), for the claimant: The proceedings on being transferred to the County Court became, in the absence of any special directions, a County Court action subject to all the incidents thereof, and a claim for damages could be rightly added under Order XXVII., rule 7, just as if the proceedings had been originally commenced in the County Court.

The COURT (LORD COLERIDGE, C.J., and MATHEW, J.) held that the wording of the County Court Rules as to interpleader applied only to actions commenced in the County Court, and that, as they contained no reference to proceedings transferred from the High Court, the County Court judge had no jurisdiction to entertain a claim for damages in such proceedings, and that the judgment for the claim for damages must be set aside.

Appeal allowed.

Solicitors: Oliver in person; Ross & Douglas Norman for the claimant.

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Table of Cases.

HIGH COURT OF JUSTICE.

HIGH COURT OF JUSTICE.

Chancery Division.
KAY, J.
Dec. 10, 11, 19.
MACKENZIE *v.* CHILDERS.

Building Estate—Restrictive Covenant—Implied Agreement Binding on Vendors.

The plaintiffs, in 1868, bought part of a building estate from trustees for sale subject to certain restrictive conditions as to building, which provided that all the plots were sold subject to the general stipulations contained in a deed-poll which had been or was intended to be executed by the vendors, and would be executed by each of the purchasers. The deed-poll was executed by the vendors and the plaintiffs and some sixty-six purchasers in all from time to time down to August, 1889. It recited that it was intended to be a part of all future contracts for sale that the purchasers respectively should execute the deed, and should thereby be severally bound by the stipulations thereof, and it witnessed that each of the purchasers covenanted with the other purchasers and the vendors to build only one house or two semi-detached houses on each lot. The deed contained no covenants by the vendors.

The vendors had recently divided fifteen lots remaining unsold in 101 lots, and offered them for sale for the erection of continuous rows of artisans' cottages; and the plaintiffs brought this action to restrain them from so doing.

Millar, Q.C., and *Kenyon Parker* (*Sir H. Davey*, Q.C., with them) for the plaintiffs.

Renshaw, Q.C., and *Onslow* for the defendants.

Millar in reply.

KAY, J., said that the deed, although in form a deed-poll, must be treated as *inter partes*, and that the vendors, if not bound by a covenant, were bound by implied agreement not to depart from the terms of it, and granted an injunction restraining the vendors from authorising any purchaser from them of land included in the original conditions to build on any plot more than one house or two semi-detached houses in accordance with the terms of the scheme.

Solicitors: Parish & Hickson for the plaintiffs; Frere, Forster & Co. for the defendants.

Chancery Division.
CHITTY, J.
Dec. 7.
In re E. W. MACDONALD.
M'ALPIN *v.* MACDONALD.

Practice—Administration—Debts Allowed, but not Claimed.

In 1864 the above-named E. W. Macdonald died. On May 28, 1866, the usual order in a creditor's action was made for the administration of his estate, but in consequence of the insufficiency of the estate the proceedings were not completed. Further assets having subsequently fallen in, the accounts and inquiries were by an order of May, 1888, directed to be continued.

On November 16, 1889, the chief clerk made his certificate, in which he divided the creditors into two classes: the first part of the first schedule containing those who had been ascertained to be alive or properly

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represented, and the second part of such schedule containing a list of fifteen creditors, with debts amounting in the aggregate to 282*l.*, as to whom no evidence had been adduced to show whether they were alive or dead. It also appeared that the notices which had been sent by post to all these creditors had been returned. There was a sufficient fund of New Consols in Court to pay all the creditors and leave the surplus over for the beneficiaries, and the question now raised, on the distribution of this fund on further consideration, was how the debts of the creditors in the second part of schedule 1 were to be provided for.

F. H. Colt for the plaintiff.

G. E. Tyrrell for the defendant.

CHITTY, J., considered that the right form of order would be to carry over to the account of each one of the creditors in the second part of schedule 1 by name an apportioned part of the New Consols equivalent, at the market price of the day, to the amount of his debt, and then the rest of the fund could be dealt with; he added that he did not feel bound to direct any further inquiry, and there was no reason why the whole fund should be kept in Court while these particular creditors were being ascertained.

Solicitors: H. Tyrrell & Son.

Chancery Division.
NORTH, J.
Dec. 14.
NEWCOMEN *v.* DODDS.

Practice—Administration Action—Fund in Court—Action by Creditor against Legatees to compel them to Refund their Legacies—Payment out—Right of Creditor to stop Order.

This was an administration action.

In October, 1889, a creditor of the testator took out a summons in the action that a fund in Court, representing certain legacies bequeathed by the testator, and which had been carried to the separate account of the legatees, should not be paid out without notice to the applicant. On October 11, 1889, before the summons was heard, the legatees presented a petition for payment out to them of the fund in Court. When the summons came before the chief clerk he adjourned it to come on with the petition. On November 23, 1889, the creditor commenced an action against the legatees to compel them to refund their legacies.

The summons now came on for hearing with the petition.

Butcher for the summons.

Cozens-Hardy, Q.C., and *E. F. Hart* for the legatees.

E. F. Rubie, Procter, and *F. W. Abrahams* for the other parties.

NORTH, J., held that the creditor ought to have applied by motion in his action against the legatees for an injunction to restrain them from dealing with the fund in Court. He, therefore, dismissed the summons with costs, and made an order for payment out of the fund. He, however, directed that the order should not be delivered out before a time named, in order to give the creditor an opportunity for moving for an injunction.

Solicitors: Hollams, Son, Cowan & Hawksley; Bower, Cotton & Bower; Michael Abraham & Co.; Prichard, Englefield & Co.

Chancery Division.
STIRLING, J.
Dec. 13.
MARSHALL *v.* LANGLEY.

Practice — Interrogatories — Co-defendants — 'Opposite parties'—Order XXXI., rule 1.

This was an action against ten defendants to set aside a release executed in favour of C. and W., two of the defendants. The plaintiffs were interested under a will and settlement, and also claimed an account and administration of the estate. C. and W. alone put in a defence, and they now moved to vary an order made in chambers refusing to give them leave to interrogate the plaintiffs and six of the co-defendants. They also asked, in the alternative, for leave to amend their statement of defence by counterclaiming against the plaintiffs and all the defendants other than themselves, a declaration that the release was valid and binding on the plaintiffs and such other defendants, and that on such amendment being made they might deliver interrogatories.

Buckley, Q.C., and *Gregson* for the applicants.

Hastings, Q.C., and *C. E. Jenkins* for the other defendants, and *S. H. Blackmore*, for the plaintiffs, were not called upon.

STIRLING, J., said that the application was made under Order XXXI., rule 1, and the question was whether the co-defendants were, in this action, 'opposite parties' within the meaning of the rule. In *Molloy* v. *Kilby*, L. R. 15 Chanc. Div. 162, Cotton, L.J., had defined an 'opposite party' as 'a party between whom and the applicant an issue is joined.' There was nothing in the cases of *Brown* v. *Watkins*, 55 Law J. Rep. Q. B. 126, and *Shaw* v. *Smith*, 56 Law J. Rep. Q. B. 174, affecting that definition. The co-defendants had put in no defence, and thereby admitted the allegation in the claim, but did not make it the ground of any application to the Court. There was, therefore, no issue joined between the applicants and co-defendants. The motion also asked for leave to amend by adding a counterclaim, but the answer to that was, that this was not a proper subject of counterclaim. The release was valid until it was set aside; and, on the present pleadings, the rights of the applicants were not affected. The motion must be refused, with costs.

Solicitors: Hoares & Pattisson (agents for F. E. Langley, Chudleigh); J. E. Moore.

Chancery Division.
STIRLING, J.
Oct. 26, 29.
Dec. 14.
Re JODRELL.
JODRELL *v.* SEALE.

Will—Construction—Residuary Gift—'Relatives hereinbefore named'—'Vested and Transmissible Interests.'

The testator, who died on November 12, 1882, by his will, dated March 23, 1868, gave his general personal estate and the proceeds of sale of certain real estate to his executors upon trust for his wife during her life, and, after her death, he directed his executors to convert the same into money, and thereout pay the several legacies therein mentioned. The testator bequeathed several legacies to legatees, many of whom he described as 'my cousin,' and three of whom as 'my niece.' Nearly all the legacies were given upon

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trust for 'the legatee' for life, and after his or her death for his or her children who should be living at the death of the legatee and of the testator's widow and attain twenty-one. He gave legacies to his cousins C. P. J. and C. S. H. and his three nieces if they should survive his wife, and in the case of his nieces attain twenty-one. By clause 37 of his will he directed the residue of his estate to be equally divided amongst 'such of my relatives hereinbefore named as by virtue of the trusts and provisions hereinbefore contained shall become entitled to a vested transmissible interest in any part of my property, and as to such of them as are females, for their separate use respectively and without power of anticipation.' By two codicils to his will he revoked the bequests to his three nieces, and by the second he expressly excluded them from participation in the 'division' of his residuary estate.

This was an originating summons taken out by the executors for the purpose of obtaining a decision as to who were entitled to the residue.

It appeared that several of the persons described by the testator as relatives were not legally his relatives by reason of their common ancestor never having been married.

Lyttleton Chubb; Rigby, Q.C., and *Christopher James; Sir H. James, Q.C., Renshaw, Q.C.*, and *Ingle Joyce; Phipson Beale, Q.C.*, and *Trevelyan; Farwell; Graham Hastings, Q.C.*, and *Swinfen Eady; Levett; Sir H. Davey, Q.C.*, and *Rashleigh; Fischer, Q.C.*, and *Hadley* for the various parties.

STIRLING, J., held that 'transmissible' meant 'capable of transmission after death;' and 'relatives hereinbefore named' meant legitimate relatives mentioned *nominatim*, if not by all, at least by some of their names. Consequently persons who took life interests only, and persons not legally relatives, were excluded. The only persons who, if the testator had died immediately after the execution of his will, would have taken under the residuary clause were C. P. J., C. S. H., and the three nieces; and C. P. J. having died in 1875, before the date of the second codicil, and the three nieces being excluded, the whole residue must go to C. S. H. The word 'division' in the second codicil did not lead to a contrary inference, the clause in which it occurred being superfluous, and inserted apparently only *ex abundanti cautela*.

Solicitors: Satchell & Chapple; Druces & Attlee; Ward, Mills & Co.; Lowe & Co.; Wadeson & Malleson; Walker & Whitfield.

Probate, Divorce, and Admiralty Division. Dec. 10. } IN THE GOODS OF ALEXANDER LESLIE MELVILLE, EARL OF LEVEN AND MELVILLE, DECEASED.

Will—No Appointment of Executors—Probate to Trustees as Executors according to the Tenor.

Alexander Leslie Melville, Earl of Leven, died on October 22, 1889, having left a will dated February 1, 1879, and two codicils dated respectively January 5, 1882, and February 5, 1885.

The testator did not, either by his will or codicils, make any express appointment of executors. He had, however, appointed Samuel Deacon, Robert Williams, jun., Henry Stafford Northcote, and William Godden 'trustees,' to whom he bequeathed, among other property, the residue of his estate in trust for certain persons named in the will.

The will, which was divided into numbered paragraphs, had been drawn up by the testator himself without legal assistance. In paragraph 6 are the words, 'My executors for my residuary estate.' There were no persons named in the will other than the four trustees to whom these words could apply.

Searle now moved for a grant of probate to the four trustees as executors.

BUTT, J., granted probate of the will to the four trustees as executors according to the tenor.

Solicitors: Godden, Holme & Co.

Probate, Divorce, and Admiralty Division. Dec. 10. } ROUTH (OTHERWISE FRY) *v.* FRY.

Nullity—Insanity of Petitioner at Time of Marriage—Rule 196.

George Fry married Elizabeth Scarden Routh, July 25, 1889. On November 13, 1889, Edward Stanley Routh, her son by a former marriage, went before Mr. Registrar Middleton and obtained an order assigning him as guardian to his mother, for the purpose of instituting against the said George Fry a suit for nullity of marriage, on the ground that his mother was not of sound mind at the time of her marriage with the said George Fry.

The order was made under that part of rule 196 which provides that 'where no committee has been appointed, application is to be made to one of the registrars, who will assign a guardian to the person of unsound mind, for the purpose of prosecuting . . . . a suit on his or her behalf.'

Middleton now applied in chambers to have the order set aside, on affidavits showing that the wife was sane at the time of the marriage.

Searle, contrà.

BUTT, J., held that there being evidence of sanity, the registrar ought not to have made the order.

Order rescinded.

Solicitors: Irvine, Hodges & Borrowman for the petitioner; Fry & Hudson for the respondent.

Probate, Divorce, and Admiralty Division. Dec. 14. } LEARMOUTH *v.* LEARMOUTH AND AUSTIN.

Divorce—Respondent leading an Immoral Life before Marriage—Costs—Co-respondent not condemned in.

This was a husband's petition for dissolution, on the ground of his wife's adultery with the co-respondent.

Bayford, Q.C., and *H. B. Deane* for the petitioner.

W. Evans for the respondent.

Middleton for the co-respondent.

The petitioner and respondent were married in August, 1884, previous to which the respondent had

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been leading an immoral life. In December, 1884, the petitioner went to India with his regiment, and made his wife an allowance. The following year he returned to this country and joined his wife, they travelling abroad together. At the end of 1888 Captain Learmouth's father died penniless, and the petitioner became entirely dependent on his pay. The result was that he accepted an appointment in Australia, and Mrs. Learmouth had to put up with a totally different class of life. She said that she was unequal to it, and came home, greatly to the distress of her husband. She continued to write affectionate letters to her husband, but after a time they ceased. Last May he returned home, and from inquiries that were afterwards made he found that she and the co-respondent were living together at Brighton.

In order to come home the respondent procured 70*l.* to be sent to her through her mother. It appeared on arriving in England she had written to the co-respondent, who was an old friend, and asked him to come to her. She had represented to him that she had no means, and that if he did not keep her she would have to go back to her old life.

BUTT, J., held that, although the petitioner had but 182*l.* a year in Australia, and could not afford to make his wife an allowance, and although he had done his best to prevent her from coming home alone, inasmuch as he had finally allowed her to do so, knowing that she had led a life of prostitution before marriage, the co-respondent ought not to be condemned in costs.

Decree nisi, without costs.

Solicitor: Maude & Co. for the petitioner; Edward Davies for the respondent and co-respondent.

Probate, Divorce, and Admiralty Division. Dec. 17. } SMITH *v.* SMITH.

Judicial Separation—Decree against Wife—Subsequent Molestation of Husband by her—Jurisdiction of Court to attach her for Contempt.

Walter Smith obtained a decree of judicial separation from his wife in May, 1888. In October, 1889, she molested him and interfered with his trade and business of a baker to such an extent that he had to sell his business at a heavy loss.

Deane now moved to attach the wife for contempt of Court by molesting her husband, after a decree of judicial separation had been pronounced against her.

BUTT, J.: My functions are at an end with the decree. The parties are now strangers to each other and I have no jurisdiction over them. The proper authority for Mr. Smith to apply to is a police magistrate.

Motion refused.

Solicitor: J. Bannister Brown.

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